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Legislative Assembly of Ontario

Second session, 35th Parliament

Assemblée législative de l'Ontario

Deuxième session, 35^e législature

Official Report of Debates (Hansard)

Wednesday 22 April 1992

Journal des débats (Hansard)

Le mercredi 22 avril 1992

Standing committee on resources development

Organization

Comité permanent du développement des ressources

Organisation



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

Published by the Legislative Assembly of Ontario
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 22 April 1992

The committee met at 1541 in committee room 1.

ELECTION OF CHAIR

Clerk pro tem (Ms Tannis Manikel): I call this meeting to order. It's my duty to call upon you to elect a Chair. Are there any nominations?

Interjection: What's his name?

Mr Daniel Waters (Muskoka-Georgian Bay): Peter who? Peter Kormos.

Clerk pro tem: Mr Kormos has been nominated. Are there any further nominations? Seeing none, I declare the nominations closed and Mr Kormos elected Chair.

Mr Waters: I'd like to hear his campaign speech first.

The Chair (Mr Peter Kormos): No, you don't. My record speaks for itself.

I want to thank my nominator and I want to thank the committee for the confidence it's shown in me. It's an impressive exercise to see this democratic process whereby committees elect their Chair, wherein persons from any of the three parties could be nominated by whomever and, depending upon the degree of confidence the committee has in him or her, could be elected to this position. I think the rule changes that were implemented have proven to be workable and effective—and I need the extra money.

ELECTION OF VICE-CHAIR

The Chair: We are now in the process of electing a Vice-Chairperson. Any nominations for the position of Vice-Chairperson?

Mr Len Wood (Cochrane North): I nominate Dan Waters.

The Chair: Are there any further nominations? There being no further nominations, I declare the nominations closed and Mr Waters is acclaimed as Vice-Chairperson.

BUSINESS SUBCOMMITTEE

The Chair: Mr Waters, I trust, is moving that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof to consider and report to the committee on the business of the committee; that substitution be permitted on the subcommittee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Kormos, Waters, McGuinty and Turnbull.

Motion agreed to.

COMMITTEE BUSINESS

The Chair: The committee has two options now, first to discuss as a committee—and it may elect to do this as committee of the whole or in camera—what it proposes to

deal with in the immediate future, or to adjourn and refer the matter to subcommittee, which would then meet immediately thereafter. Any comments in that regard?

Mr Dalton McGuinty (Ottawa South): I don't see why we couldn't deal with this in subcommittee.

The Chair: Are there any other comments? Everybody's nodding their heads in agreement? This is a consensus. Oh.

Mr David Turnbull (York Mills): Sorry. One thing Mrs Cunningham wanted to bring to the attention of the committee as opposed to just the subcommittee was that with respect to her private member's bill, the bicycle helmet bill, several members of the public have come forward and would like further public hearings. She requests, first of all, that she could have extra time allocated for it, and in addition to that she felt it might be useful for her to appear before this committee and discuss a strategy. Being accepted, I understand, by the government that it would like to move ahead with this legislation, she thought it might help the situation.

The Chair: It's my understanding, and others can correct me if I'm wrong, that the committee had agreed that in view of the fact that it hasn't completed its questioning of all the people who wished to make presentations, there were going to be scheduled further presentations. That's number one. Second, Mrs Cunningham obviously isn't here today but is welcome, of course. Third, the subcommittee of course cannot bind the committee. I'm sure we'll take into consideration what you've had to say. You're of course on the subcommittee, but the committee can overrule the subcommittee. But there's been no objection to the proposition that there be more time allotted to that bill for further consideration and, more important, for further hearing of witnesses.

Ms Sharon Murdock (Sudbury): Isn't it correct, and I stand to be corrected on this, that the mover of a bill carries it in clause-by-clause anyway?

The Chair: Oh, yes. Mrs Cunningham is always welcome here and will be sitting here beside the Chair, whoever the Chair might be on that day—no two ways about it. She of course can appear here as of right at any time on any matter and speak to it, as far as I'm concerned, contrary to what some other chairs in the past have been instructed to do.

Ms Murdock: My understanding too, having spoken with Mrs Cunningham, is that she would only require one day for hearings, just to inform the subcommittee.

Mr Waters: Further to that, I have just asked the clerk about that. I think we want to make sure that everyone who wanted to come before the committee has an opportunity to come before it. We can deal with all that in subcommittee.

The Chair: Any other comments on that specific matter?

Mr Turnbull: Just that my understanding was that she felt more than one day of public hearings was required.

Ms Murdock: Not on that particular matter; another matter.

The Chair: Obviously you don't agree on that. Ms Cunningham can clear that up when she has a chance to speak to us.

Mr Waters: We've basically dealt with the whole question here in committee. Why don't we just continue on and allow for future hearings? We've sat here and dealt with what we're going to talk about in subcommittee.

The Chair: All right then, we'll go back to what had been our agreement by consensus, and that is to refer the balance of matters to the subcommittee.

Ms Murdock: No. I have another matter.

The Chair: For committee or for subcommittee?

Ms Murdock: No. Yes. Well—

The Chair: Which is which?

Ms Murdock: It could be for subcommittee, depending on the answer I get. This is in relation to the standing order 123 that was brought forward on the Workers' Compensation Board, where the interim report is going to be submitted to this committee I believe on May 16. We asked for it, whatever time it was; I believe it was mid-May. Did we use up the whole 12 hours, and if not, are we allocating any time to go over that interim report?

The Chair: There is some time left, and you may want to spend some time with the subcommittee when it meets immediately after this. There may be, for instance, 38 minutes left, give or take a few minutes—not a whole lot of time, but you may want to join the subcommittee to address that specific matter.

Now we're adjourned until Monday coming at 3:30 in the afternoon. Thank you, people.

The committee adjourned at 1549.

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Turnbull, David (York Mills PC)

Wood, Len (Cochrane North/-Nord ND)

Clerk pro tem / Greffière par intérim: Manikel, Tannis

Staff / Personnel: Anderson, Anne, research officer, Legislative Research Service



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Official Report of Debates (Hansard)

Monday 27 April 1992

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Standing committee on resources development

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 27 April 1992

The committee met at 1606 in committee room 1.

SUBCOMMITTEE REPORTS

The Chair (Mr Peter Kormos): Okay, it's 4:06. There's a report to the committee from the subcommittee to the following effect with respect to Bill 124:

"The subcommittee met on Monday 27 April 1992 and agreed as follows:

"That the committee allow for additional time for witnesses unable to attend at earlier hearings plus such additions as provided to the clerk.

"That the committee will request the Ministry of the Attorney General, Ministry of Community and Social Services, Ministry of Health, Ministry of Transportation, Ministry of Tourism and Recreation and the Ministry of the Solicitor General to express their concerns on specific issues for preparation of the bill (amendments) and regulations. In addition, the committee will invite the Bicycle Safety Advisory Council of the Ministry of Transportation to make a presentation prior to the ministries.

"That the committee will recommend a bill and a report to the House.

"That the ministries will be scheduled for one hour each with three scheduled on the same day.

"That the hearings will resume on 29 April 1992, if possible."

That report is moved by Mr Waters. Any discussion?

Motion agreed to.

The Chair: There's a further report of the subcommittee, and that is to the effect that:

"The subcommittee met Wednesday 22 April 1992 and agreed as follows:

"1. That the chair and vice-chair of the Workers' Compensation Board would be requested to appear before the

committee one week after the interim report is tabled with the committee.

"2. That the clerk would canvass the three parties to check for possible witnesses on Bill 124, An Act to amend the Highway Traffic Act."

Who moves that?

Mr Daniel Waters (Muskoka-Georgian Bay): I can move that.

The Chair: It's moved by Mr Waters. Any discussion?

Mr Waters: There could be a conflict between what we talked about in subcommittee on this bill and that. I believe Ms Murdock, who hopefully will be here at any moment, who stepped out for a moment, can clarify when that is coming down.

The Chair: Obviously if this is made with such specificity, "That the chair and vice-chair of the Workers' Compensation Board would be requested to appear before the committee one week after the interim report is tabled," it would seem to me to supersede Bill 124 for the purpose of that one afternoon only. That's my understanding of the recommendation.

Mr Waters: That's fine with me as long as everyone's clear on that.

The Chair: Everybody's nodding his head indicating that's his understanding of it. You've moved acceptance of this report. All in favour?

Motion agreed to.

The Chair: Is there any other committee business? The committee is adjourned until Wednesday, 3:30 pm. Thank you.

The committee adjourned at 1610.

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Murdock, Sharon (Sudbury ND)

Offer, Steven (Mississauga North/-Nord L)

Turnbull, David (York Mills PC)

Wood, Len (Cochrane North/-Nord ND)

Substitutions / Membres remplaçants:

Cunningham, Dianne (London North/-Nord PC) for Mr Jordan

Clerk / Greffier: Brown, Harold

Staff / Personnel: Anderson, Anne, research officer, Legislative Research Service



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Standing committee on resources development

Highway Traffic
Amendment Act, 1992

Assemblée législative de l'Ontario

Deuxième session, 35^e législature

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Le lundi 4 mai 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant
le Code de la route



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 4 May 1992

The committee met at 1540 in committee room 1.

HIGHWAY TRAFFIC AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT LE CODE DE LA ROUTE

Resuming consideration of Bill 124, An Act to amend the Highway Traffic Act / Projet de loi 124, Loi portant modification du Code de la route.

The Chair (Mr Peter Kormos): We're a few moments late starting, but as I noted earlier, it was undoubtedly because of the compelling impact of the probing questions and revealing responses during what was a less than invigorating question period today.

MINISTRY OF TRANSPORTATION

The Chair: We have with us Mike Weir, road user safety officer, Ministry of Transportation. Mr Weir is here at the invitation of the committee to, first, make any opening statement if he wishes to make one and, second, respond to queries put to him by the people present. Of course Ms Cunningham is with us as the sponsor of this private member's bill. The clerk, Mr Brown, is distributing the Windsor Star article to which reference was made in one of our previous meetings, Windsor Star article dated April 20, 1992, which refers to Ms Cunningham in almost the lead paragraph, the second paragraph, which is reasonably close, and that's simply for your information.

Mr Weir, did you plan on making an opening statement? Mr Dadamo, you wanted to say something?

Mr George Dadamo (Windsor-Sandwich): Yes, first please, and then Mr Weir will take it after I'm through.

The Chair: Sure.

Mr Dadamo: There are a few words that I'd like to put on record this afternoon regarding mandatory bicycle helmets, if I may.

The Chair: You're speaking on behalf of?

Mr Dadamo: As parliamentary assistant to the Minister of Transportation.

The Chair: So you're speaking for the government, for the Ministry of Transportation. This is like having Bob Rae right here.

Mr Dadamo: Yes, just about. Thank you very much. What an afternoon you've had obviously.

I'm addressing the committee today in my capacity as parliamentary assistant to the Minister of Transportation, the Honourable Gilles Pouliot. I am in quite a unique position respecting the consideration of this bill, being both a member of this committee and affiliated with the ministry that would have responsibility to administer the proposed legislation.

I last addressed the committee on behalf of the ministry last November. At that time I stated that there was no doubt in anyone's mind that bicycle helmets saved lives

and reduced head injuries. After having had the benefit of hearing from the many extremely knowledgeable people who appeared before the committee, I can confirm that presumption absolutely. We have heard overwhelming evidence respecting helmet effectiveness and have seen the tragic results of bicycle crashes on those who do not wear those helmets. I'd like to commend the member for London North for bringing this issue to the Legislature.

I feel that referral of this bill to the committee to hear from the public is the responsible course of legislative process. We have learned a lot both in terms of how this proposal may be viewed by different interest groups and how such a law may be handled so as to make it responsible and publicly supported. Action on this issue has not ceased since the committee and the Legislature adjourned at Christmas. I've heard from several groups; the ministry has heard from several groups. I'm sure Mrs Cunningham has heard the term "bicycle helmet" a few times over the last couple of months. With the nice weather here now, folks on bikes are becoming more and more apparent on our streets, and you know that many of them are wearing helmets. I know the Minister of Transportation has been following the committee's deliberations with interest and looks forward to our recommendations.

The Ministry of Transportation has also been following the committee's deliberations and supports the premise of reducing deaths of and injuries to cyclists. They recognize, however, that it is not enough to pass a law and hope that people will comply. Several witnesses appearing before this committee went to great lengths to describe the type of support that will be necessary to make such a law a successful one. This is a private member's bill. However, if this proposal becomes law, it will be the Ministry of Transportation that will be ultimately accountable to ensure that it works.

Mike Weir from the ministry's safety planning and policy branch is with us today and will give us the ministry perspective on this issue. Mike attended every one of our sessions last year and has followed helmet-use trends and issues closely over the past year. Thank you, Mr Chair.

The Chair: Thank you, sir. Thank you to the Minister of Transportation.

Mrs Dianne Cunningham (London North): Well said.

The Chair: Ms Cunningham notes that it was well said and I think everybody on this committee agrees entirely. Mr Weir, please.

Mr Mike Weir: Thank you very much, Mr Chairman. I too have a prepared text that I will read for the purpose of Hansard. When I am through I would be pleased to answer any questions. Hopefully my text will answer a lot of the questions people may have.

I want to begin by stating that yes, I was in attendance of all the meetings last session. I have heard from all the folks who appeared before the committee and what they've had to say and I've found the experience to be both interesting and enlightening.

The Ministry of Transportation has been a long-time promoter of bicycle helmets. We've undertaken several initiatives to enhance bicycle safety and increase helmet use. The ministry supports the intent of this bill and believes that future legislation can be successful. The ministry also believes there are a number of tasks that must be done before a bicycle helmet law will be truly effective.

The ministry has a mandate to provide for the safety of all road users in Ontario. We take this commitment very seriously. In fact I'm sure you're all aware of the minister's announcement in the House last session regarding the establishment of an arm's-length corporation that will have a sole highway safety mandate. The structure will provide better opportunities for broad consultation with private sector traffic safety experts in the development of future safety policy and public education initiatives, a concept not unlike the purpose of this committee. We believe the establishment of the corporation will facilitate the introduction of several new initiatives to enhance road safety for all road users, including cyclists.

I mentioned that the ministry strongly promotes bicycle helmet use. Last November Mr Dadamo described in some detail our historical efforts. The ministry's new bicycle policy, which is currently in its final approval stages, will articulate several initiatives that will enhance both the safety of cyclists and opportunities for cycling.

While bicycle safety is a very important issue to the ministry, there are many other important traffic safety issues which must be addressed. The ministry must perform a balancing act, both in terms of human resources and dollars, to ensure that all the issues for which we have the ability to influence receive an appropriate level of attention.

A current traffic safety priority for the ministry is that of seatbelt use. The analogy between seatbelt use and helmet use has been raised by several witnesses appearing before this committee. Ontario was the first jurisdiction in North America to introduce a seatbelt law in 1976, despite the fact that belts had been around in vehicles for several years already.

When the law was first introduced, compliance rates rose dramatically from about 17% just prior to implementation to about 75% almost overnight. However, due to the lack of enforcement and lack of public acceptance of the law, compliance dropped over the first year to about 41%. It's taken us the last 16 years to bring that level up to the present 83%. We estimate that if everyone who died in a motor vehicle collision in 1990 had been wearing a seatbelt and wearing it correctly, about 200 lives could have been saved.

It's worth noting that some other Canadian jurisdictions spent years conducting public education and awareness prior to the introduction of legislation and as a result have had extremely successful laws with very high compliance rates.

Now let's look at where bicycle helmets fit in. In 1990, 29 cyclists died in collisions with motor vehicles and over 3,700 were injured. When unreported collisions are added, these numbers are even higher. We know that approximately 75% of these deaths were a result of head injuries and that about 85% of those deaths could have been prevented had the riders been wearing a helmet.

The Ministry of Transportation is interested in supporting legislation which actually accomplishes the objective for which it is developed. There are many operational issues associated with this bill that have been articulated by people appearing before this committee time and time again. These issues are important and must be addressed in order that the law be successful. For the record, I will reiterate the major ones.

1550

1. The present voluntary usage rate is appropriately 5% to 8%, although we are seeing more and more people wearing helmets every day. That means that about 90% of cyclists out there or better do not currently wear helmets. We must convince them that helmet use is necessary. This will take time and considerable resources.

2. There are three main helmet manufacturing standards for helmets that are sold in Canada and the United States: The Canadian Standards Association or CSA, the American National Standards Institute or ANSI and the Snell Memorial Foundation. These standards are currently not mandatory. In other words, a helmet can now be sold that does not meet one of these standards. We will need to plug this hole.

3. The CSA has not developed a helmet standard for children under five years of age. Both the US standards approve children's helmets. Why doesn't the CSA? Could it be because they are still concerned that helmet design needs further refinement before they are as safe as possible for the special needs of little children? If this is the case, the ministry feels that we need to be sure that what we are putting on our kids' heads is safe.

4. At the present time there's no Ontario-based manufacturing sector for helmets. I am sure that any announcement regarding a mandatory helmet law will bring an influx of US-manufactured helmets into Ontario. Perhaps we should attempt to encourage the establishment of an Ontario-based manufacturing sector and thus promote Ontario jobs.

5. Enforcement will be a problem, but not an insurmountable one. While it's true that persons under the age of 12 can't be convicted of a provincial offence, there may other ways to deal with non-compliance by minors. There are other jurisdictions with helmet laws that have had to deal with the enforcement problem. We want to learn from their experience.

A couple of US jurisdictions with helmet laws have devised some unique enforcement strategies. New Jersey has just recently introduced a helmet law that applies to persons under the age of 14. Violators are given warnings by police, and their parents or legal guardians can be liable for fines if it can be shown that they failed to exercise reasonable supervision or control over the child's conduct. Both New Jersey and Howard county, Maryland, have provisions

where fines can be waived where violators can provide proof that they own a helmet or have since purchased one.

6. Helmets can be purchased today at prices that may seem very reasonable to some people, but there will be others to whom a \$35 pricetag will cause some legitimate hardship. Therefore, we can expect that there may be some people who may not be able to legally cycle because of this law.

7. In order to ensure that this law has a fair chance of success, it will have to be supported by comprehensive public education and awareness programs. Virtually all witnesses who appeared before this committee, whether they supported the bill or not, agreed that education and awareness programs are essential to increasing helmet use. We know it works. In the avid cycling community of Ottawa public awareness programs have resulted in an average usage rate of about 28%, and an incredible 45% for commuter cyclists.

To do a proper job, complimentary campaigns must be run, at the very least, through one full cycling season and must be designed to reach every type of cyclist in every corner of the province. This is a major change for people who ride bikes, even for those who ride only once a year. They deserve the benefit of public awareness programs.

The message must be consistent and repeated often in order to be effective. Many cycling groups that appeared before the committee were concerned that helmets were being dealt with exclusive of other bicycle safety issues. They recommended a broader safety package that addresses collision prevention measures as well as helmet use. Perhaps such a campaign should be considered with helmet use as an integral component.

There are five communication devices that would create public awareness and would assist in bringing about compliance with a helmet law:

(a) Videos have to be produced in many languages aimed at both primary and high school students, with at least one video available and used in every school in the province.

(b) Multilingual brochures and posters: Over a two-year period we estimate we would need about two million brochures and 10,000 posters to cover it.

(c) Public information displays that could be used at bicycle rodeos, in malls and at other recreational functions.

(d) Transit advertising: Display cards on the sides or backs of business, in transit shelters, subway stations etc.

(e) Finally, paid radio and television advertising. The reason I said "paid" is because public service announcements often don't get the air time, or at least the desirable air time, to reach the majority of the people. This is the most successful form of advertising to reach specific target groups and the majority of people—and yes, it's the most expensive.

The approximate cost to deliver the items I've mentioned is about \$3.5 million for the first year, not including developmental costs. A helmet subsidy program could add considerably to this cost. If the full cycling season of advertising was next year, you would have to start planning now.

It should be noted that the Ministry of Transportation is having some difficulty maintaining our current levels of funding for public education and communications. Clearly we have some work to do to secure implementation partners and develop strategies to ensure a successful law. We believe, however, that if we take the time we'll have a unique opportunity here both to introduce a mandatory helmet law that will be supported by the public and to pursue an implementation process that will be seen to be responsible.

The ministry is aware that there are several bicycle helmet coalitions and working groups out there that stand ready to assist. We know the cycling community will also help in whatever way it can. A couple of other ministries have recently voiced their interest in bike helmets and may be in a position to help, and we understand the bill's sponsor may have a few ideas of her own.

In summation, the Ministry of Transportation supports the principle of Bill 124: that of reducing deaths and injuries to cyclists. However, we also believe that the issues of enforcement, cost, helmet standards, the establishment of an Ontario market base and the need to gain public acceptance through public education and awareness programs should be addressed before bicycle helmets are mandated through legislation. We feel that a period of two to three years to lay the necessary groundwork for a mandatory helmet law is necessary.

If the committee sees fit to recommend the bill be passed in the House, we would urge that the bill contain a clause that will bring the legislation into effect on proclamation. This will give us the flexibility to ensure that these important issues can be dealt with rationally and effectively.

The tasks to be done are many and the resources are slim. The ministry does, however, have some expertise in terms of both policy development and public education. We will be pleased to work cooperatively with the bill's sponsor to plan and prepare for bicycle helmet legislation.

The Chair: Thank you, Mr Weir. I'm going to propose first that Ms Cunningham respond to that, either with comments or with questions, and then take questions from the balance of committee members. We've got lots of time; we're prepared to be pretty flexible. Mr Weir, of course, has all the time in the world to spend with us, at least until 6 o'clock.

Mrs Cunningham: First of all, I want to say I was encouraged by both Mr Dadamo's remarks and certainly by Mr Weir's, and I think he's right on. He has covered almost all the issues that have been certainly before the committee. As we go along I think others will have some questions, and I'll maybe start with what I've got and people can add to it. Some of the members have changed and others have been here for a while.

To start with, I'll relate an experience we had just before lunch today. There's always another group that comes to see us and there's always another phone call every day, and there are always more people who want to make a presentation before the committee. The good news is that most of them are in favour, but every once in a while

somebody isn't, and he normally has some pretty good reasons for being concerned.

Today we had an interesting question that I've never asked before, and that was with regard to the ability of the police to enforce this law. You mentioned, Mike, with regard to the concern of the 12-year-old, so I'd like you to elaborate on that.

The other one is, and I want this one for the record, why would we be amending this particular piece of legislation under your ministry and not coming out with something under the Ministry of the Attorney General? That was the question: that in fact we wouldn't then be concerned about the age of the child. I don't know whether that's a legitimate question, but perhaps you could expand upon that one for starters.

1600

Mr Weir: Sure. First, the enforcement issue: The way the Provincial Offences Act is currently written, a person under the age of 12, to not be convicted of a provincial offence—that is not to say they can't be charged, but there's not a lot of utility in charging them if they can't be committed. I'm sure the writers of that legislation probably have some good reasons why the age of 12 is stipulated. I think that question should be pursued with the AG.

As I mentioned in my text, however, there are some other jurisdictions that have helmet laws currently in place, and they've had to cope with the enforcement hurdle. In a couple of the jurisdictions I mention—New Jersey and Maryland, just to reiterate—their law applies precisely to the people who under this proposal couldn't be convicted, and they seem to be having some success.

The police give violators warnings, and they can hold the parents liable if they can show that the parents were in a position where they should have had more control or some supervision. They have some unique strategies for fines as well. If the child violators or the parents can show they have purchased a helmet since the violation, they can waive the fine. So there are some other places we can look to try and deal with the enforcement issue.

I guess I answered the second question in part of my rambling on the first. I think your second question was, "Why wouldn't we amend the Provincial Offences Act to lower the age?" What would we lower it to? Ten? five? I don't know. What is the appropriate age at which we should be holding children responsible—legally, criminally responsible? I'm sure the AG can elaborate on that issue.

Mrs Cunningham: This is a technical question. The legislation itself is rather simple. It's one word; it's an amendment.

Mr Weir: Right.

Mrs Cunningham: On this one issue, and there are many others, how would this be written so that people would understand what fines or what deterrents we would be considering? I know normally you wouldn't bring it before a committee.

Mr Weir: Right.

Mrs Cunningham: But with regard to all of us who are probably going to be the public spokespersons for

helping to educate the public in some way, is that something you would bring to us for us to consider, or would you deal with that in your own department? How does it work?

Mr Weir: I believe it can work in two different ways. The bill could go forward as it's proposed and then we would have to address all the issues that pop up subsequently, or else we can do it more cleanly and recommend that changes be made now, which I believe is the better way to go.

I think the committee and the ministry would need to identify exactly what that piece of legislation should look like and whom it should apply to. If, for example, parents were going to be held partially responsible, that would need to be written into the legislation.

I assume there will be an opportunity for a clause-by-clause review of this bill, and I believe that would be the appropriate time to recommend those changes.

Mrs Cunningham: Would they come in the form of an amendment to the bill itself or, for example, in the legislation for motorcycle helmets, would the issue around the helmet and the standards be in the regulations?

Mr Weir: The regulations are a different issue. They can be written and effected much more easily than legislation. So when we're talking about standards, the Ministry of Transportation would have to either write a new regulation or amend the current regulation that deals with motorcycle helmets to include provisions for bicycle helmets. We wouldn't need to address the regulation at this point. We would need to address things like whom it applies to. If we wanted to have a specific penalty for this infraction, we would need to address that. We would need to, in the legislation, address any potential exemptions. Those are the types of things the legislation should apply to.

The Chair: Sorry to interrupt, but I did want to bring to everybody's attention the paper that's just been distributed, written by Anne Anderson, who's our research officer, who I think we'll all agree has very quickly brought herself up to speed on this issue notwithstanding that she wasn't with us during the earlier stage of the considerations. It addresses some of these issues—that is to say, the capacity of the committee to draft regulations or recommend regulations. It's a valuable bit of research that's relevant not only to this particular issue but I'm sure all of us will store it away in our mental filing cabinets so that we're more informed about this than we were before. Thank you for that, Ms Anderson.

Mrs Cunningham: Just looking at page 2, it says in this report, "the section relating to helmets specifies that the Lieutenant Governor in Council may make the regulations concerning the standards, specifications, identification and marking of helmets."

"It appears that the committee cannot be directly involved in the making of regulations." But it does say, "Incorporating its proposals in a report." That might be a good idea.

Mr Weir: So if, for example, the committee felt that helmets should meet certain standards, I feel it would be appropriate that that recommendation be included in the

report and then we could include that in the regulation. We're talking about three standards for helmets in Ontario, and I think what we would probably be doing is writing a new regulation or amending the current one to identify those standards as being the standards which bicycle helmets should meet.

Mrs Cunningham: Would it be appropriate, then, Mike, for you, or you and Anne, to advise us? For instance, you've just said that the legislation itself should address who and the penalty and the exemptions, and we may or may not have figured out what should go in the regulations. So if somebody would thoroughly take a look at even what you've put together—some of this would be legislation, and the other would be regulations. I don't know how to do this, Mr Chairman, but you know what I'm getting at. We want to be helpful and most of us have some pretty good ideas about what we're concerned about.

Mr Weir: Yes. We would want to make sure that whatever we included in the regulation was comprehensive and included all the things that it should include. That's one of the reasons why we suggested that we need some time.

Mrs Cunningham: I wanted to get that question up front because it was one that was asked this morning and it was one I couldn't answer in any way. It might be useful to go through the presentation that Mr Weir gave, because I think there are about 10 issues in here and we could address them one by one and then others could jump in as well. Would you like me to start?

The Chair: Yes.

Mrs Cunningham: On page 2, "the establishment of an arm's-length corporation that will have a sole highway safety mandate," could you fill us in on how that's working or what the status of it is now?

Mr Weir: I understand that there is a group of folks who are working on what a new organization would look like. I have not been personally involved in that project and am not familiar with the latest status.

Mrs Cunningham: Because I'm expecting that the development of future safety policy, then, and public education initiatives—we would hope that they would be considering this piece of legislation as part of their work if that's the way—

Mr Weir: This would be the type of issue that the road safety corporation would address, yes.

Mrs Cunningham: Okay. The reason I asked is that if we do come up with ideas around public education—and you've given us certainly a list of them; we may have others and some of us may privately be trying to get some resources to be helpful—does it mean that because of this arm's-length corporation we have to go through it first of all for what we want to do and second for funding?

Mr Weir: I'm not really sure. I think that will be the corporation that will in essence take that portion out of the Ministry of Transportation, which currently deals with safety and regulation. So when the corporation does become effective or is in place and is working, and I'm not exactly sure of when that operational date will be, then that

would be the organization that would deal with this type of issue, yes. It would in essence move that portion of the ministry's current responsibility over to the road safety corporation, from what I understand.

1610

Mrs Cunningham: I just saw another hand there.

Mr Stephen Owens (Scarborough Centre): The road safety agency was announced in the House. This may make Mr Chairperson blush—

The Chair: With shame.

Mr Owens: —but in terms of our new auto insurance package, the legislative framework is still in process and will be announced in the fairly near future, but I'm not sure what role that agency will have in terms of bicycle safety. The initial mandate at this point is to deal with automobiles. There may be a role—I'm making a great assumption now—for bicycles as well, but at this point it's my understanding that the bill is dealing essentially with automobiles, with due respect to the Chair.

The Chair: That was most helpful, Mr Owens, but I remember the ghost car program in the Ministry of Consumer and Commercial Relations. Mr Offer remembers that, too, because that was part of the announcement the quintet made—the Ministry of Transportation—which bore a remarkable similarity to some more recent announcements about road safety corporations. That ghost car certainly was Casper-like. It never saw the light of day; it never existed.

Mr Steven Offer (Mississauga North): At that point it was the opposition party of the day. They were adamantly opposed to these things, weren't they?

The Chair: The opposition party still is.

Mr Offer: Of the day, yes. But when they became the government, they—but you could speak much more clearly on that.

The Chair: The party hasn't changed its position, Mr Offer.

Mr Offer: You'd be a lot clearer on change of positions than I could ever be.

Mrs Cunningham: Shall I get back to the issue?

Mr Daniel Waters (Muskoka-Georgian Bay): I was going to suggest that.

Mrs Cunningham: That was interesting dialogue. I'm already at page 6. I'm looking at the operational issues here, the voluntary usage rate. Then, on to page 7, I'd be interested in asking about the helmet manufacturing with regard to the standards. Does the ministry feel comfortable with the three standards presented to the committee, even though the CSA has not developed a helmet standard?

Mr Weir: For children under five?

Mrs Cunningham: Yes. What would we do there?

Mr Weir: I think the ministry would like more time to compare those standards. We would certainly want to know those standards inside out before we were to include them in any regulation.

Mr David Turnbull (York Mills): Would it not be appropriate, given the kind of lead time you're suggesting

in this paper, to temporarily accept the standards of perhaps one of the US institutions pending development of any further rules, but with a clear statement to people that anybody who bought it in the meantime that that would be satisfactory, using the ministry's best judgement as to what the best standard would be?

Mr Weir: Absolutely. The ministry would be recommending that people wear approved helmets, regardless of what our current level is. We know that an approved helmet is better than a helmet that is not approved.

Mr Turnbull: Exactly.

Mr Weir: You're absolutely right. Were this law to become effective, say in two or three years, the regulations would accompany the legislation. We would want to make sure that whatever we articulated in the regulations at that point were the best possible standards. I believe the three that have been proposed are good standards.

Mr Turnbull: I suppose what I'm really saying is that given the kind of lead time you're talking about and with the knowledge that a law might come in—children are better protected with a helmet today than without. Would it not be better for us to say we would at least grandfather those helmets, to encourage people to buy helmets in the meantime, rather than almost discouraging parents from buying them?

Mr Weir: Oh, yes. We wouldn't want to discourage people from putting helmets on their children's heads. Yes, I think that is a reasonable suggestion.

Mr Dalton McGuinty (Ottawa South): I'm going back to page 4, Michael. You made reference to compliance rates with respect to the seatbelt law. I'm just wondering if you feel that in light of the fact that the bicycle helmet is so much more visible—in other words, so much easier to detect whether you have compliance—that might be a significant factor in terms of the compliance rate.

Mr Weir: Quite possibly, but I guess I would again draw an analogy that a cyclist going through a stop sign is also very visible, a cyclist not having a light on the front of his bike at night is very visible, and there's not a high enough level of enforcement for those types of things. I can only speculate on that question. I think you're right that from an enforcement perspective, if you don't see that a person is not wearing his seatbelt, then you might decide, "I don't really need to stop that vehicle," whereas if a cyclist rides by with no helmet—very visible, a blatant violation—perhaps we may expect a higher level of enforcement. I'm speculating.

Mr McGuinty: Dianne, you were up to what page?

Mrs Cunningham: I was moving towards the helmets, but I appreciate that question. I was on page 7.

Mr McGuinty: I have another one arising out of page 5.

Mrs Cunningham: Go ahead.

Mr McGuinty: You've given recent statistics dealing with deaths and injuries for 1990, cyclists being involved in accidents. Michael, you probably have not done this, and maybe it's kind of a moot question, but we're talking about the cost here of implementing a program: A thorough and effective program, as you've described it, is \$3.5 million. I'm

wondering what it would have cost us to treat those injuries through health care facilities this year.

Mr Weir: I'm not sure what the number would be. I suspect it would be higher than that. There were folks who appeared before this committee who provided information on the type of resources required for long-term health care, and the numbers were high—very high.

Mr McGuinty: Thank you.

Mrs Cunningham: I'm going to get into this thing about the helmets again. I thought Mr Turnbull raised an important question. I think all of us as we listened certainly were convinced that the three standards were the standards we would want for Ontario. What's shocking to me is that when I go into the stores I see these rows and rows of these helmets that have no standards at all, and they're way more expensive than the ones we can buy.

I don't know how many of you were in London for the ladies' ride for cancer a couple of weeks ago on the Sunday. The Kiwanis Club gave out—what was it?—1,000 approved helmets, for nothing. That's where they put their money to get more compliance, set an example—we don't have the great compliance you have in Ottawa—and I thought it was remarkable.

At the same time, others came to me during that ride and said: "Look, I just bought this helmet. I want to follow whatever the potential legislation might be. I spent \$45." You could buy these approved helmets—all three standards, I think, Andrea; I'm not sure—for \$25. They were selling them for \$25, and these people were paying \$45, \$50 and \$60 at bike shops and Canadian Tire. These were adult helmets; they were basically for children over 12. I was thinking, Mike, in the meantime we should be doing something about that. We should be discouraging the salespeople from purchasing from people who—we don't want to set this example and have people having to go out a year or two years later.

I'm going to jump right to the end and then back up again. You advise us on page 15, at the very end: "If the committee sees fit to recommend the bill be passed in the House, we would urge that the bill contain a clause that will bring the legislation into effect on proclamation. This will give us the flexibility to ensure these important issues can be dealt with rationally and effectively." Do you mean in the meantime?

For instance, if we were to introduce the bill this spring or next fall and say, "This is what we want," and even if we don't have the regulations drafted, because that would or would not be appropriate—because I don't know that—and you also said that you're not quite certain if the standards may be different two years from now, but certainly we could introduce the bill with an intent. That would solve the problem of getting the right helmets into the province and manufactured here. Maybe bicycle manufacturers could even put helmets with bicycles as they sell them, which was a suggestion from one of the committee members; I can't remember who. It would certainly save parents the kinds of dollars they're spending now because they want to be responsible, and they're buying helmets

that aren't approved. What's your suggestion? How could this work for us?

Mr Weir: Again, I think that's where public education and awareness would come in. We would want to articulate in public education devices the helmet standards which we felt were appropriate. The brochures, the videos, that type of thing, would give information on helmets and identify which standards organizations approve helmets, and we would recommend that the approved helmets be the ones that are purchased.

1620

The Chair: Mr Owens, you wanted to join this, and then Mr Dadamo.

Mr Owens: I think Dianne raises a good point in terms of the stuff that's in the stores now. I understand your answer to be a public education portion between the time the bill is passed and the time it's proclaimed, rather than a coercive move to have the stuff taken off the shelves; urging consumers to move in one particular direction.

Mr Weir: And urging the helmet manufacturers to start making approved helmets available.

Mr Owens: In terms of enforcement post-proclamation, if a person is wearing a helmet, would the police just ignore that person?

Mr Weir: There would be no enforcement in the interim period until the bill has been proclaimed in force. So if we have a two-year pre-proclamation period, let's say, during that time you would be advising the public on the need to wear a helmet, what types of helmets are good helmets to wear and advising them that they should be looking for the manufacturing standards sticker inside the helmet. Then when the law were to become effective, it would stipulate that the helmet you wear must meet one of the standards identified in the regulations.

Mr Owens: And that goes to my question that if a person is found with a helmet not meeting the grade, would that person be fined?

Mr Weir: They're theoretically in violation of the law, yes, if they are wearing, let's say, a hockey helmet or a substandard helmet on their bike. That is currently the case for motorcycle helmets as well. There are certain standards that motorcycle helmets must meet, and if a person is found wearing a helmet that does not meet one of those standards they are in violation.

Mr Owens: Would there be a section or regulation with a sunset clause that, after such and such a date, stores or manufacturers would no longer be able to sell ersatz helmets?

Mr Weir: Yes, there would need to be a provision like that as well.

Mr Dadamo: I wanted to mention a couple of things earlier. Notes were given to me regarding the road safety agency. As it relates to bikes, that has not been stipulated yet by MTO. We don't know exactly what their role will be. I wanted to mention earlier that MTO is also in the final stages of completing the bike review, and that will be coming out soon.

There was one other quick item Mrs Cunningham was talking about that made me think. I know a lot of our colleagues are going out to high schools and elementary schools in their ridings. Sometimes, as I do, you want to find something different to talk to the students about. If a short, very concise video could be put together and distributed to the 130 members, we could incorporate it into whatever dialogue we choose to speak with the students about and go into the high schools with it.

Mr Weir: If you can find the time on your agendas to do that, that's great.

Mr Dadamo: That's our target audience anyway, and we talked long ago last year about going after especially the elementary students. We have to start somewhere, and that wouldn't be such a bad idea—just a thought.

Mrs Cunningham: I think that's an important point. We have speaking notes we give to our caucus colleagues, but things are changing with regard to this issue almost daily. I was quite surprised on the Sunday of that women's ride for cancer to speak to the distributor, Carlyn Safety, and if Andrea can get all of us one of these, there's a lot of good information in it. But what I liked was that here we had a Canadian company distributing Canadian helmets describing sport bicycle use and an infant helmet, and noting that CSA is not yet equipped to approve infant helmets: totally honest and upfront in advising parents. The costs were from \$23.95; the highest one was \$24.95 and the parents could just pick this up and order it. I'm sure there would be other companies that would want to do the same thing in different areas of the province.

Interjection.

Mrs Cunningham: Yes, they're just great. This is the one I have now, but the good news, I think, on behalf of our committee is that people are feeling confident enough that they can do this and that they can encourage somebody to come into the province, which is what this group is doing, to manufacture these in Ontario. Now, whether it will happen in the next few months, I don't know. These are purchased from Quebec. I think it's exactly what this province is all about.

I guess my question is this, and anybody who would be appropriate should be answering this question. If we were to introduce the bill into the Legislative Assembly, would the government then be looking at it, at that time, with the intent of proclaiming this bill on the first of May, let's say, 1994, that kind of thing? Somebody has to have a time frame if they are going to put this kind of money into something. It wouldn't be hard to figure out how many young people in the province are going to ride bicycles now and how many helmets somebody is going to need to manufacture in the next two years. So my question is, how do we give people the confidence to get in there and do this? I think we all have a lot at stake if we're going around talking about this.

Mr Weir: Regardless of whether the legislation actually identifies an implementation date, I think that if the bill were to be successful, that would encourage people coming into Ontario to manufacture helmets. I also believe that perhaps we should be proactively trying to encourage that.

Mrs Cunningham: I don't have a problem with it, but I get the question, "What if this thing is dropped a year from now?"

Mr Weir: I think that informally we would certainly have a target date or a date we would want to work towards should this bill be successful in the Legislature. The nice thing about not setting a date in the legislation is if you reach that date and your level of public acceptance is not appropriate, if we haven't been successful in saturating the province with public education and the public is not ready for it, your hands aren't tied and you don't need to put the law in place until such time as those things are addressed.

Mr Owens: In terms of the companies involved in the manufacture of the helmets, I think for the last couple of years either CCM or Cooper has worked in conjunction with the Ontario Medical Association, and they have offered discount coupons for approved helmets. Maybe this is something that we can urge private sector involvement in to encourage the moms and the dads and all the other folks out there who are bike riders to get the approved helmets even before the legislation is effected.

Mr Weir: They're extremely successful programs. The Ontario Medical Association and Sandoz Triaminic offer a rebate program for helmets and have exceeded their target by about 300% in terms of helmet sales.

1630

Mrs Cunningham: I thought everybody might like to know, from one of the medical journals, the new Ontario Medical Review, April 1992:

"Bicycle-Safety Helmet Campaign Launched.

"The Ontario Medical Association is participating with the Canadian Medical Association (CMA) and other provincial medical associations in a nationwide bicycle-safety helmet campaign to begin April 30, 1992, and continue throughout the spring, summer and fall."

We really have to be grateful for this.

Mr Owens: My comments were prophetic, then.

Mrs Cunningham: Yes. This was brought to our attention just a couple of days ago, but you're quite right.

"The CMA will be sending bicycle-safety tabletop displays to all family physicians"—which there are now, but this is yet another major campaign—"paediatricians, and emergency physicians in Canada. The displays will include coupons offering bicycle-safety helmets at discounted prices of \$19.95 for child helmets, \$21.95 for youth helmets, and \$23.95 for adult helmets. The coupon provides detailed information on how to choose a bicycle helmet along with general riding safety tips."

Then it goes on to talk about the 85%, numbers we all know about.

I think it would be important for this committee, if we are going to put a report together, to recommend that we have kits for ourselves, because we have to say the right things and be able to answer the questions. There are some loopholes here. My great fear is that I don't want to end up in the same position we found ourselves in five years ago after some fairly major campaigns, although I think that with the drug companies, the CMA and the government

being involved, we ought to be looking at pretty good compliance. We should be asking Ottawa what it is doing differently.

What's your suggestion around this loophole on page 7, "We will need to plug this hole"? It says: "These standards are not mandatory. In other words a helmet can now be sold that does not meet one of these standards."

Mr Weir: Mr Owens alluded to it. We would need to create a provision—I believe it can be done through regulation—so that substandard helmets couldn't be sold in Ontario.

Mrs Cunningham: That kind of thing would be after the two-year trial period?

Mr Weir: I think we would want to have that provision advertised during that two-year period so that substandard helmet manufacturers can get up to speed and have it become effective at the same time as the legislation.

Mr Waters: Can I jump in? I have a real concern about two of the standards.

Mrs Cunningham: All right.

Mr Waters: The only one that I find acceptable is CSA, because CSA is the only one that periodically goes out and does a physical inspection of helmets. Working in a controlled industry before, the wire and cable industry, they just walk in randomly. I understand the other two American ones do not; once you get your approval, that's it. I would like clarification on that. I would also like to know if the ministry has talked to CSA about the helmet situation. Are they coming up with something that's approved?

Mr Weir: Yes, I talk to them periodically. The CSA is working on a helmet standard for children under five. I have heard the same rumours about the American standards, the fear being that maybe five years ago a helmet met one of the American standards, the standard has since been updated and the helmet still bears the approval sticker of that manufacturing standard despite the fact it no longer really meets the new current standard. That is a concern. I can't confirm one way or another here today whether that is the case, but that is an issue we would certainly want to have clarified.

Mr Waters: The other part is indeed the actual inspection. Even if the helmet design is an approved design, the CSA—it is my understanding from some other remarks—is the only one of all those agencies that goes out on a continual basis, walks into the manufacturer's shop and says, "I want that, that and that helmet," and then runs a check on what's being run that day on the line. The Americans don't.

Mr Weir: I can't say with any certainty whether the American standards organizations do that.

Mrs Cunningham: On page 8—this might be following along with your concerns, Dan—I thought that was an interesting paragraph and I commend you for putting it in. Perhaps in our report we could make specific recommendations as to how we can do that. It's on the same subject of, "Perhaps we should attempt to encourage the establishment of an Ontario-based manufacturing sector, and thus

promote Ontario jobs." I am referencing it because it's something we could put in our report. We could have a report with 10 parts to it and say, "This is what we are going to expect to see two years from now."

Mr Waters: We have products made in the US that are CSA approved. From what I understand, working in the past, they just randomly check shipments. The key is that the CSA seems to have a better compliance with its standard than the American ones and I am concerned. If we are going ahead with a law to protect people from head injury, I want to make sure the helmet is indeed a good helmet.

Mrs Cunningham: Absolutely. I think there will be even more research and gains made in the right direction within the next two years. We may even have an infant helmet.

Number 5 on page 8, the enforcement: I suppose what we want here would be some ideas on what we would be looking at again.

Mr Weir: I understand the Solicitor General has been asked to appear before the committee.

Mrs Cunningham: Is that correct? I think so too.

The Chair: He's been asked.

Mr Turnbull: On this particular point of enforcement, I think it has to be taken in conjunction with the question of funds for those people who would find it difficult to afford a helmet, because we can't start enforcing something unless we know it's not going to cause hardship. If you don't mind, I'll just back into the question. Perhaps funds could be made available from the Ministry of Health that would otherwise have been used for head injuries to help subsidize helmets. Then, if we know that is in place, that nobody's going to be under any hardship buying a helmet, perhaps we could apply the same sort of rules that are applied with respect to hunting: confiscation of bicycles if the people are not wearing the helmets.

Obviously we have to talk about wearing the helmet on the head, not, as I believe in some administrations in the US, where people have got away with wearing a helmet over their elbows. Perhaps you could just comment on those two suggestions.

Mr Weir: If the Ministry of Health has some funds available that it could commit to this public education, that would be fantastic. However, I won't answer on behalf of the Ministry of Health.

The second part of your question was compliance. Yes, I think the intent is to have helmets on people's heads, and merely carrying a helmet along the handlebars or on your arm should be a violation.

Mr Turnbull: I was concerned about your comment on page 9, sub 5, talking about Maryland and New Jersey, where provisions have been made that fines can be waived where the violator can provide proof that he or she owns a helmet or has purchased one. The fact that you own a helmet does nothing for compliance.

Mr Weir: Yes, you are absolutely right. I think their strategy there is—initially, anyway, their laws are fairly new—that they want to get people out there buying hel-

met and at least to make sure they're available. It wouldn't surprise me at all if we were to see them amend their legislation eventually to do away with that provision, because the intent is to have the helmet on your head, not merely to own one.

Mr Turnbull: Otherwise each family has a helmet at home and they show it when they say they own one.

Mr Weir: Yes. I merely raised that as an example of one of the things that might be considered, initially anyway, to try to encourage people to purchase helmets. Hopefully, if they own them, they'll wear them.

1640

The Chair: I want to clarify the reference to the office of the Solicitor General. The clerk has spoken with staff from the Ministry of the Solicitor General and has been advised that he will be advised in the early part of this week as to whether they might attend during the second week. The clerk has made frequent telephone calls to the Ministry of the Solicitor General and on four occasions has spoken either with the machine or with a real person. It is still uncertain whether or not they're really interested in being here, but they're going to let the clerk know during the course of this week.

I want to welcome Dave Edgar, who is from the office of the Minister of Transportation and who has maintained a strong interest in these proceedings throughout the course of them, in the past and currently. Of course the whip's office is represented here today. The whip's office undoubtedly has a strong interest in what's happening here and that's appreciated.

Mrs Cunningham: I have a question with regard to the message we're going to try to put forward on page 11. I think the groups we really did promise to ask for further input from, or at least address their concerns, were the cycling groups themselves, especially the one here in Toronto that has been so helpful. I ask this question in the context you stated at the beginning, Mike, that the ministry would be coming out with a bicycle policy on safety.

Mr Weir: Well, that the ministry's bicycle policy will address in part safety considerations.

Mrs Cunningham: Is this something that is happening now?

Mr Weir: It's in the final approval stages. From what I understand, we can expect an announcement some time shortly.

Mrs Cunningham: Does this mean that whoever is in charge of this policy is aware of what we have been talking about in the committee?

Mr Weir: Yes, they are fully aware.

Mrs Cunningham: Good. They've been looking at the Hansards or at the presentations or whatever.

Mr Weir: Yes, and I have been in contact with the folks who are working on it.

Mrs Cunningham: I have to tell you that having been in politics for 18 years, that's a refreshing response.

Mr Weir: In fact, I was in the working group.

Mrs Cunningham: It's very nice to know that every once in a while we come down here and something we do is meaningful, to the extent that we might be affecting at least the policy of any government. I say that based on a number of years. All governments recommended a broader bicycle safety package that addresses collision prevention measures as well as helmet use and all kinds of other issues they were concerned about.

It really goes back to our concern just before the break that if you don't know how to ride a bicycle and you've never had anybody tell you the rules and you just go buy one and get on the road and do it, and you don't have any parental supervision or the schools don't really care if you have crash-out races in the school yard, what's the point of wearing a helmet? If that's the kind of thing they are looking at, that's fine by this committee, because that was definitely the concern of the bicycle committees as well as the enforcement you've suggested: stop signs, lights and the whole bit.

This leads me to the next question. Would this be an appropriate time to have the ministry look at two or three of the complaints about the existing regulations? Are we going to hear from the ministry with regard to appropriate fines or have enforcement around people who don't have reflector lights, which was a specific that came before the committee?

Mr Weir: There is a fine in place for people who don't have a light on their bikes right now. From what I understand, the enforcement of that provision is somewhat limited, but the provisions do exist.

Mrs Cunningham: I can't remember in context, but maybe somebody else on the committee can—perhaps yourself, George. When we were discussing this before, I think one of the witnesses suggested that the fine wasn't appropriate and somebody from the government said—and I don't think it was yourself, Mike—"Oh, we're looking at that and we're going to increase the fine." Does anybody else remember that?

Mr Weir: Oh, I see. Yes, I can comment on that. Let me start by saying that I think the fine level for violating almost every other rule of the road is currently around \$78. The fine level for not having a light on your bicycle is currently \$20, and there was a proposal or recommendation from the cycling community to increase that to make it consistent with all the other violations of rules of the road. Again, I can't comment on what the status of that is right now.

Mrs Cunningham: Maybe that's something the committee would like to respond to. It was raised certainly more than once. The point was that if you're looking at the regulations in this act with regard to cycling safety, is that something you should be looking at now? I certainly don't want to take the rap for that. I don't want to lose this bill on that issue, of course.

Mr Weir: There are tons of things we could do in terms of legislative amendments to enhance bicycling safety, but those things take time. I think the committee may want to consider including in its recommendations

that other bicycle safety issues are a concern and need to be addressed.

Mrs Cunningham: It's certainly been noted that the funding for the public education program is a challenge, and maybe we can discuss that in more detail at another meeting. I don't have any other questions with regard to the presentation by Mr Weir, Mr Chairman, but other committee members would, I'm sure.

The Vice-Chair (Mr Daniel Waters): I believe Mr Owens has a question.

Mr Owens: Mr Turnbull alluded to this question. In terms of the person who for whatever reason can't afford to purchase a helmet, what are you going to do for that person or do to that person? Are they simply going to be precluded from riding their bikes? One could extrapolate that to if they can't afford a helmet, they perhaps cannot afford to ride public transit either, which is the reason they want to take their bikes.

Mr Weir: Yes, and that's why I think it's important to find whatever means is available, whether it be through public funds or private sector partnerships and sponsorships, to try and make helmets available to people at as reasonable a price as possible. As I raised in my presentation, there will be folks who may find the price of a helmet to be a legitimate hardship, and that's a reality, and yes, there may be some folks who actually can't cycle, or legally cycle, because of this law. What we'll do for those folks is something I don't feel comfortable answering now, but certainly I think that's an issue that needs to be discussed by the committee.

Mr Turnbull: Right on what Stephen has just asked, because I wasn't here during the committee hearings into this, there must be a cost which is associated with the annual health cost—that was what I was referring to—of accidents. If they can be alleviated, based upon your statistics—I think you said 75% of those could be alleviated—surely there's a net saving involved to the Ministry of Health which it would seem to me outweighs the cost of even the first year of implementing some sort of subsidy program for people in need.

Mr Weir: It sounds quite logical and I would be interested in the Ministry of Health's response.

Mr Turnbull: Clearly we should not have any legislation that in any way precludes people from being able to ride their bikes because of financial hardship. You don't have a number?

Mr Weir: I'm sorry, I don't have a number, but I'm sure there are some other folks who do.

Mr Offer: I'm one of the new members on this committee. I've been off and on. I have a couple of questions. On page 5 you go through the amount of individuals who have either died or were injured. Is there any breakdown of that as to age where this has happened? Is there a tendency that most of these injuries take place with the young kids, or what?

Mr Weir: Yes, collectively the majority—and again I don't have the precise breakdown—of collisions are by those 15 and older. That's because there are more folks 15

and older riding now. But as a group, if you were to pick an age group, the younger group is being affected the most. These statistics, by the way, only reflect the reportable collisions where a bicyclist has been in a collision with a motor vehicle.

1650

Mr Offer: Thank you. The other question deals with exemptions, but I know you've alluded to other jurisdictions that have legislation of this nature. Is there an example of there being exemptions by virtue of religion?

Mr Weir: Yes, two Australian jurisdictions have full helmet laws. Victoria, Australia, provides an exemption for Sikhs, based on religious freedom. I believe they also provide an exemption for people who can provide some other medical reason why wearing a helmet might be detrimental to their health. Curiously, they also provide an exemption for cyclists participating in sanctioned events, cyclists from other countries or other places in Australia to participate in an event.

Mr Offer: Circuses, things of that nature?

Mr Weir: Possibly, yes.

Mr Offer: Thank you. Are you aware of any jurisdiction which forbids or prohibits the sale of a bicycle without approved headgear?

Mr Weir: No.

Mr Offer: Last—I don't know if it's to you or to everybody—how has the question of cost been resolved? For instance, what about the person who can buy the bike but can't afford the helmet? Has the committee discussed what one does in that case?

Mr Dadamo: Yes and no.

Mr Offer: As an addendum to that question, my guess is that there is probably a growing market in the sale of used bikes, second-hand bicycles. Has it been addressed as to whether the sale of the headgear, the helmet, would apply to a second-hand bike, a used bike?

Mr Weir: I believe the issue was alluded to during some of the deliberations last session. The problem with second-hand helmets—is that what you are getting at, Mr Offer, the second-hand helmet market?

Mr Offer: Yes.

Mr Weir: It's very difficult to tell sometimes whether a helmet has been damaged. If a helmet has been damaged it shouldn't be used again, so unless you can confirm absolutely that the helmet is unscathed and undamaged, it shouldn't be passed on.

Mr Offer: That would, of course, apply to siblings?

Mr Weir: Yes.

The Vice-Chair: I'm going to take a bit of licence in the chair and comment. We talked about helmets and bikes. Regardless of whether you bought the bike or the bike was given from another jurisdiction, all of that is secondary. The key is that you must wear a helmet. That is what we are talking about.

Mr Offer: The essential issue is, what if you can't afford the helmet? I don't believe there's anyone who would speak against the need to attempt to mitigate these

incredible statistics of death and injury, to do whatever one can do, and if helmets are a way to minimize that, that's terrific. I am sure there are also public education programs which would also do some good in this area, but I am speaking for those people who would share in the principle of the bill but who might not have the dollars to put up for their children.

The Vice-Chair: I think I'll direct that to Ms Cunningham.

Mrs Cunningham: You know how I'll answer it, Steve. I always say you can't afford not to buy a helmet. With the statistics the way they are, I don't understand people not having helmets on their children now. People who are fortunate enough to be educated should have helmets on their kids now.

I guess the experience that certainly brought it to light was one of the students in a grade 8 class that I was talking to last fall said, "Well, Mrs Cunningham, I couldn't play hockey without a helmet any more, so when I got my skates, I had to get my helmet." Kids are pretty well conditioned to this now. In T-ball in London now they wear helmets because we had a terrible accident a couple of years ago with a bat. That's just the sports groups themselves. It's not mandatory, but if you don't have a helmet within sports groups now you can't play.

When it comes to the secondhand stuff, a lot of kids are buying secondhand equipment. I think there is always a risk with skates and hockey helmets that don't have the right strap or a piece at the back is broken off. Those are the risks you take. But as parents, I think most of us, and certainly the coaches themselves, are checking equipment all the time; it is just that nothing is going to be perfect. But either the committee and the government decide that after two years of a lot of hard work, where they've given people the opportunity—and there's been enough lead time to do it—it becomes then the political courage to do what's right. That's what it's going to come down to. I think in fairness, what we are saying is that people have to plan ahead.

The question is quite worthy. I wouldn't have introduced this bill if I didn't think that \$25 is a very small price to pay to prevent the kind of accidents that have been brought before this particular committee. That's what I say when I'm asked. I think the video that certainly will eventually be made—but the one that we use from the Ontario Head Injury Association, you show that once and it's pretty convincing.

Mr Offer: The only reason I ask is because I'm a newer member of the committee and I don't know if the issue of cost had been addressed. I am well aware of the arguments dealing with hockey and things of this nature. Again, I know that all of us will want to do what we can to mitigate the death and injury and the real suffering that occurs, but there are families that have four and five kids and I just don't know if that particular aspect has been addressed in terms of eventually there being subsidies and things of this nature. I understand the argument with hockey. I think if anyone goes to a rink on any Sunday

afternoon where there isn't organized hockey or where there are pickup games sometimes there aren't helmets worn.

Mrs Cunningham: I know.

Mr Offer: If people take their kids figure skating or just family skating, helmets aren't worn there either and maybe they should be.

I would just like to get a little bit more information on what we do with those individuals who want to get helmets—because we all want to get helmets—but can't get helmets. It's not a matter of they don't want, they do want, but they have to go to a store and it's \$25 and you've got three kids, so it's \$75. What's going to be done? I used three because that's how many kids I have.

1700

Mrs Cunningham: I think, Steve, the very good news, for those of us who have been talking about this for over a year now, is that we used to use the number \$50. People talked about \$50, \$60, \$70 regularly a year ago. Now people are talking about \$25 and \$30. So we've come a long way in a year because we know we can at least get them for that price. But I think the concern that you've expressed even for one child is extremely legitimate and I don't think we've got a solution to it, but I think we have to think about it.

Mr Offer: Maybe the people who sell the bikes, instead of selling them with a kickstand, should take off the kickstand and attach a helmet.

Mrs Cunningham: There you go.

Mr Offer: Or instead of 18 gears take it down to three.

Mrs Cunningham: Which would be safer too for young children.

Mr Offer: It is evident that I'm in the market for a bike.

Mrs Cunningham: Are you? Yes.

It's a very legitimate question, Mr Chairman, and we just don't have an answer to it, but in my view, the last two examples you used are the very things that parents are trying to cope with right now. As we watched the children buy bicycles two weeks ago on that particular day where the used bikes came out and they had to meet certain standards by the Kiwanis Club, we also watched very young children getting on bicycles with five and 10 gears when we knew, just by looking at them, that they weren't going to be able to ride those bicycles safely. So we have other problems in society today.

The Vice-Chair: Are there any other questions of Mr Weir? I think we've sort of got away from him, as we do quite frequently as we go through this bill. That's fine, but we had asked him to be here for an hour and we are well beyond that. I was just wondering, are there any other questions of Mr Weir?

Mr Weir: It's just my backyard that's waiting for me. It needs to be raked.

The Vice-Chair: We're saving you from that. No other questions?

Mr McGuinty: Mr Chair, I'm not sure how to properly put this together or formulate this question, but with

your experience, Mike, maybe you can tell us something. We are discussing this, of course, in the abstract and we think that generally this is a good idea. I gather you have some experience in these matters. How saleable is this to the public? How difficult is it going to be to convince the public that it is a good thing to wear helmets and it's a good thing to put helmets on their children?

Mr Weir: Some 5% to 8% are wearing them right now. Those numbers speak for themselves. I think with the type of communications and public education programs I talked about—and those were just very quick down and dirty brainstorming suggestions—we will certainly see those numbers increase. We're seeing the numbers increase more and more now. As other people see people riding with helmets on they get curious and they start to think, "Hey, gee, maybe it's a good idea." As helmets become commonplace, something happens in their minds psychologically and they start to believe in the merits of that piece of equipment.

I think if the communications and public education were done properly and correctly and reached the right people and reached enough people, that over time—and I'm not sure if two years is the point or not, we'll see when we reach that point. There are ways to determine. We can do observational surveys and evaluations at that point to determine what the level of public acceptance is. If this law were to become effective tomorrow, I feel that its chance for success would be slim.

Mr McGuinty: Even if we were to provide everyone with a free helmet? I'm just—

Mr Weir: Speculating?

Mr McGuinty: Yes, speculating.

Mr Weir: That's never been done before in my experience, so I couldn't comment on that.

Mr McGuinty: I gather there's some thinking that's gone on in these areas in terms of—you may even have led evidence to this effect earlier on—what kind of acceptance rate you have to have before you can make something law.

Mr Weir: Yes, and they're not carved in stone. I believe we discussed this last November and I think I used a 25% limit. Again, the 25% was merely a number that indicated a certain amount of public support for a concept, a level at which we would feel more confident in putting a law in place.

Mr McGuinty: That 25% means 25% of cyclists would be wearing helmets?

Mr Weir: Yes. I think I said it last November and I'll say it again: I don't believe the number's carved in stone, but I think there has to be some way to determine what the level of public acceptance is, and counting the number of people with helmets on their heads is one way to do it.

Mr McGuinty: When we brought the seatbelt law into effect, how many people were wearing seatbelts?

Mr Weir: We estimated about 17%.

Mr McGuinty: This 17% versus 25%: does the ministry have any kind of a policy with respect to this?

Mr Weir: No, we don't have any kind of a policy. The purpose of my analogy there was to show that perhaps we might have been more successful with seatbelts if we had waited. Other jurisdictions—Australia, for example—had voluntary usage rates well in excess of 50% before they put their law in place, and they had spent some seven years preparing for a law. They implemented programs through the school systems where kids had to wear their helmets if they were going to ride their bikes to school and all kinds of other strategies to increase voluntary usage rates. So when they did finally implement the law, they already had an extremely high level of public support, thus making their law extremely successful. It got over a 90% compliance rate.

Mr McGuinty: If I might pursue that for a minute, does that jurisdiction have more people using bicycles than we do, on a per capita basis?

Mr Weir: I'm not sure what the comparative numbers are.

Mr McGuinty: I just wonder why they were ahead of us in terms of promoting bicycle safety.

Mr Weir: Yes, that's a good question. I can't answer that; I'm sorry.

The Vice-Chair: Mr Offer, you have a supplementary to that?

Mr Offer: I have a supplementary to that. With the seatbelt law, the seatbelts were already in the cars; they were already installed. It was just a matter of clicking them up. That would be something different than what we're talking about here, because we're talking about—

Mr Weir: The access and availability—

Mr Offer: Prior to the installation of seatbelts; that's what we're talking about. So I just wanted to be clear on that.

The second thing is the low incidence of usage of helmets. Is it your opinion that it is in the 5% to 8% range because people don't want to use helmets, or because of it being a balance of cost against safety type of issue? For instance, if the helmets were \$5, is it your opinion that right away that 5% to 8% would probably be 40% to 50% almost overnight?

Mr Weir: I think cost is a factor, but I think there are several factors that contribute to usage rates, such as peer pressure and knowledge of the benefits of helmets. If the cost were \$100 and people were fully aware of the benefits of helmets, you would see the 5% to 8% increase again all by itself. If you were to lower the price of the helmet to \$5, yes, I think the usage rates would increase. But to get an overall broad acceptance of a law and to get a whole cross-section of Ontarians believing in helmets, it takes more than cost and more than merely knowledge on its own. It's a combination of things.

Mrs Cunningham: I think Mr Offer might be interested to know that the most poignant argument on behalf of the parents who came before the committee who were pleading for legislation was that no matter what, they couldn't get their children to wear helmets. Those were the ones who really made us sit up and listen. That's part of the problem we're facing right now. In spite of the educa-

tion programs, many of the people who came before this committee said that no matter what they say or do or the example they set, even within home and school associations and communities, there is a lot of peer pressure involved in this issue. That's one of the challenges we have.

Having said that, most of us agree that we ought to give it a chance for a year or two and see what we can do, but at the end of that time, given that home and school associations and Kiwanis groups are telling us they've had 10 years of public information, some of us are going to have to make a different decision.

Mr Turnbull: Michael, I haven't had the benefit of sitting on this committee through the hearings, so this is probably a very naïve question. I suspect I already know the answer, but I'm going to ask it anyway. Given the number of helmets parents are now asked to buy—hockey helmets and bicycle helmets and, if the children ski, ski helmets—would it not be possible to design a helmet which would be an all-purpose helmet?

Mr Weir: Quite possibly. I don't have technical expertise in terms of helmet manufacturing or design, but I think the manufacturers would certainly want to be thinking about innovative approaches like that, yes. I'm sorry, I can't answer your question directly. I can only speculate.

Mr Owens: In terms of the peer pressure issue, I guess the question is, how do you make helmets trendy? How do you turn them into the equivalent of a \$125 pair of running shoes that kids will go out and buy, to make that product not only socially acceptable but also sought-after as well?

Mr Weir: I think just the fact that more people are wearing them will help to achieve that in itself, but surely there are some communication strategies to help them be perceived to be more trendy.

Mr Owens: Bo Jackson doing helmets.

Mr Weir: Yes, sure.

The Vice-Chair: I'm going to jump in on that statement. I think that probably in the open market system out there, as the helmets become more popular you're going to see each manufacturer start to try to get a bigger share of the market.

Mr Owens: You're starting to sound like a member of the third party.

The Vice-Chair: I know. It's scary, isn't it? I look at this brochure that we had sent around. They have stickers and so on where they can personalize them. I think that's the way it's going to happen.

Mrs Cunningham: As was pointed out in the budget speech, we're working for a balance. This is a good example.

I would like to say thanks to Michael for being here all along. I hope he'll stay with us until we get this through. This is a most uplifting report. I appreciate it very much and I'm sure the other members of the committee do as well. It's very encouraging.

The Vice-Chair: Are there any other questions? Hearing none, the committee stands adjourned until Wednesday, at which time we will resume, tentatively at 3:30, but we do have a definite commitment for 5.

The committee adjourned at 1714.

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- * Owens, Stephen (Scarborough Centre ND) for Mr Wood
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* In attendance / présents

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Staff / Personnel: Anderson, Anne, research officer, Legislative Research Service



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Wednesday 6 May 1992

Standing committee on resources development

Highway Traffic
Amendment Act, 1992

Assemblée législative de l'Ontario

Deuxième session, 35^e législature

Journal des débats (Hansard)

Mercredi 6 mai 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant
le Code de la route



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 6 May 1992

The committee met at 1717 in committee room 1.

HIGHWAY TRAFFIC AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT LE CODE DE LA ROUTE

Resuming consideration of Bill 124, An Act to amend the Highway Traffic Act / Loi modifiant le Code de la route.

CHILDREN'S HOSPITAL OF WESTERN ONTARIO

The Vice-Chair (Mr Dan Waters): It has been agreed by all three parties that we start at this point in time, so I will call the meeting to order.

Today we have with us Dr Jane Gillett from the head injury clinic at the Children's Hospital of Western Ontario. Welcome to the committee, and the floor is yours.

Dr Jane M. R. Gillett: Thank you. Given how informal everything's been prior to this, I think maybe I'll keep things on an informal basis. I'd like to start by thanking you all for asking me to be here.

I mentioned my background a bit already, but I'll just go into it a bit more. I'm a paediatric neurologist on staff at the Children's Hospital of Western Ontario and an assistant professor at the University of Western Ontario both in paediatrics and in the department of neurosciences. I also am the director of the paediatric traumatic brain injury rehabilitation team that runs out of the children's hospital in the Thames Valley Children's Centre. For those who aren't familiar with it, the Thames Valley Children's Centre is the London equivalent to the Hugh MacMillan Rehabilitation Centre here in Toronto. I think most people will at least know the Hugh MacMillan centre.

I've been on staff there since August of 1990 and have looked after all the traumatic brain injuries that have gone through the intensive care unit there since August of 1990. I feel very strongly that the wearing of bicycle helmets is a very important measure both for health care costs and to prevent long-term damage. I'm going to talk strictly from a paediatric perspective and not even mention the benefits on an adult side of things, because I think you've been addressed by several adults already, or at least physicians who look after adults. So we'll pass that one by.

To start off with, I thought I'd describe a case I looked after. I'm calling him Joey just for the sake of a name; that's not his real name. He was the youngest of four children and he was riding his bicycle after school in June of 1990 and was struck by a car. He was not wearing his bicycle helmet. When the emergency crews arrived at the scene he was without vital signs, which means he had no pulse and no respiration. They managed to resuscitate him and take him to the local emergency department where he was deeply comatose, and they transferred him then to the Children's Hospital of Western Ontario to the intensive

care unit, which in London we call the paediatric critical care unit.

At that point he had a scan done to see the extent of his damage. It was noted that he had haemorrhages and blood in the frontal lobes of his brain and his temporal lobes on both sides, the thalamus on the left side, which is a very deep structure within the brain that is the major relay station for the entire brain, and the corpus callosum, which is the major connector between the two sides of the brain.

He was in the hospital for a total of 15 months. He was in the intensive care unit for four weeks in a coma, on a respirator getting complete support and was finally extubated and transferred to the ward. He remained in a coma. In other words, he was unresponsive to stimulation for another six months. He gradually emerged from his coma at that point and then stayed in hospital partly for therapy and partly because the extent of his damage was so vast that he was unable to go home until his home was modified to allow wheelchair access and his parents to look after him.

He required a G tube initially, which is a tube that goes into his stomach to feed him. He had a tremendous amount of nursing care, and now that he's at home he requires somebody to come in to help him in the morning to get dressed and bathe him because his mother works on the family farm and has farm chores.

He requires feeding assistance. Someone has to feed him and his food has to be modified so that he's able to eat it. He is aware of his family and he certainly laughs when somebody makes a joke or teases him that he has a girlfriend, but he is unable to communicate in any way other than laughing or making noises.

He is very restricted in his motor capabilities. He's wheelchair-bound or in a bed. Despite extensive medical manipulation he is still extremely stiff and unable to move. We're still investigating experimental possibilities for fixing this.

He has help that comes in every morning, as I mentioned. He has external help that comes in at night-time so that his mother can do some chores. He gets some form of relief during the planting season and the reaping season because the parents are out on the farm for 18 to 20 hours a day and Joey needs somebody to look after him all the time.

He goes to school, but he doesn't get any cognitive benefit out of it. He's unable to learn from it, but he is getting a lot of social interaction and it does give his mother a break, so that has been a benefit as well.

You can see that Joey's life has been markedly changed. I feel very strongly that if he had been wearing his bicycle helmet at the scene the chances of his having a cardiac-respiratory arrest would be very remote and his injury would not be nearly as severe. He would not need to have been in the hospital for as long and he would probably

not need to have his home modified, nor would he need to have as much help in the home. If he had been wearing his bicycle helmet it wouldn't have prevented the accident but it would have prevented a lot of the damage that occurred.

That's an example of the types of cases that I deal with on a fairly regular basis. Just to give a perspective, and let's look at some of the statistics. The Canadian Institute of Child Health printed a book recently called *The Health of Canadian Children*. They've been collecting statistics for Canada. In 1985, 55% of deaths—we're not talking just injuries, we're talking deaths—in children between the ages of five and 14 were caused by injuries of some form or another. If you look at the statistics in terms of research, cancer causes only 19% of all children's deaths and yet there's way more research, way more money spent on cancer than there is on preventing injuries and the treatment of injuries. Of the injuries that did cause death in 1985, 54% of those were caused by motor vehicle accidents and 20% of those were motor vehicles hitting cyclists.

They estimated in 1987 that 90 more children were injured for every one child who died in a motor vehicle accident, which works out to 20,000 children who were injured by cars. If 20% of them were car-bicycle injuries, that works out to 4,000 children in 1987 across Canada who were injured by a car-bicycle accident and required hospitalization. Indeed, if you look at the hospitalization statistics, 9% of all injury-related hospitalizations for children between the ages of five and 14 back in 1983 were caused by bicycle accidents. There are some tables that I've included at the end of the handout showing the graphs where these statistics came from. If you note the number where they talk about injury-related hospitalizations, they mention the number of about 37,000 children. So we're still talking of a significant number who would have been hospitalized.

If you look at the cost per day for a child to be on a ward such as the children's hospital in London, it's approximately \$2,100 a day. That's what the hospital would charge an out-of-province child. That's obviously not what the parents see. In fact, I was somewhat shocked at that myself. I didn't realize it was that amount of money. If you look at the cost in the PCCU, the intensive care unit, it's in excess of \$26,000 a day. So if you consider just children admitted overnight for observation because of a bicycle accident, we're spending \$2,100 for that child to be in overnight to be observed.

If you look at a child such as Joey who was in the PCCU for a month and then out on the wards for several months thereafter, his total cost, just the hospital cost, was \$960,000. That's a tremendous amount of money. That buys a tremendous number of bicycle helmets. I knew it was expensive, but it floored even me as to how expensive this was.

I'm just talking hospital costs. That does not include the costs of the extra support that Joey now has in the home; it does not include the cost of all the special equipment that Joey needs in order to have some semblance of a normal life. It does not include the cost of his special education and the fact that he needs an aid at school now.

If you look at all those as the way things are now, that's \$1.5 million.

The American Trauma Society estimated that the lifetime cost for severely injured pedal cyclists in the United States was more than US\$4.5 million. I would say that's probably an underestimate, certainly for Joey. That might be appropriate if you look at an 18-year-old or even a 27-year-old, but I think it's considerably low for Joey.

So if you consider how much money we would save by insisting that children wear bicycle helmets, on that factor alone I can't imagine that we wouldn't go that route. Regardless of that, I have a more selfish reason for wanting people to wear bicycle helmets: I'm way too busy and I'd like very much not to be as busy as I am.

I've just talked about major head injuries. If you look at minor head injuries caused by a fall off a bicycle—and that happens all the time; I'm sure all of you, if you've had children riding bicycles, have had them fall off their bicycles and hit their heads. They've probably been lucky in that they haven't hit their heads really badly, but they have at least fallen and hit their heads. We are learning more and more that those minor types of head injuries in which they might have been knocked out only for a few minutes, or not even necessarily knocked out, have a lot of long-term problems. Those problems include difficulty sleeping at night, having headaches, not being able to concentrate or pay attention, and having problems in school with processing information and integrating information. Those are examples of some of the problems. Their school grades often drop a level, and if they were just passing, they frequently start to fail.

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In an older person, there are problems at work and it can cause a lot of stress to families and can cause marital breakups. So even the minor head injuries have an impact and I haven't even tried to cost the financial impact of those.

I don't know whether you're interested in what causes a head injury or a way of a conceptualizing it. I usually tell my parents, when I'm explaining to them what happened, to think of the brain as being like a bowlful of jelly stuck in a hard box. The brain is actually about the same consistency as a bowlful of jelly. You're falling off and you hit your head. The head, the skull and the brain are travelling at the same speed. The skull hits the cement and the impact of that is transmitted through to the brain that is now hitting the skull. It hits there, it bounces back across to the other side and it oscillates back and forth. At the bottom of this box there are a lot of sharp, little spicules that are sticking up; that's the way the skull is shaped. So you're having your brain dragged back and forth along these sharp little things, ripping the bottom portion of it. Often there's a turning injury to it as well, so that the brain cells are sheared against each other and you get further damage just on the basis of a shearing injury.

A bicycle helmet, although it's not going to totally eliminate an impact such as the one that Joey had, on a fall off a bike or a less extensive injury it would certainly absorb a lot of the injury and prevent a lot of the damage

that was caused. It's a lot easier to prevent a head injury than it is to treat a head injury.

Just to finish, in southwestern Ontario since I've been there since August of 1991, we've had five major brain injuries to children riding bicycles. Joey was one of them. Three were hit by cars while riding their bikes. One of them was a young girl who was riding behind her brother and hit one of those little grates they have in the road, slipped off her bike, hit her head on the cement sidewalk and ended up having a big epidural haematoma, or a bleed in her head, by the time she was in hospital and treated. She's left now in a wheelchair, having to communicate using a computer or another type of box and is not as damaged as Joey, but certainly is severely damaged and will be damaged like that for the rest of her life.

If you look at how effective bicycle helmets are and in reality how cheap they are in comparison to the cost of having to look after them, I can't see why anybody wouldn't want his child to wear a bicycle helmet. I can't see why any adult wouldn't wear a bicycle helmet when he is riding his bike. It just is beyond my comprehension as to why anybody would even risk something like that.

In the New England Journal of Medicine back in 1989 a study was done in Seattle that showed that wearing bicycle helmets reduced the risk of head injury by 85%. That's a major, significant change. It's a very cost-effective, very easy type of bill activity, whatever you want to call it. It's so incredibly cost-effective. It's so easy that I think making a law and insisting on it, considering how poor the compliance is right now, is one of the best things this government or any government could possibly do.

The Vice-Chair: Is that the end of your remarks?

Dr Gillett: Yes.

The Vice-Chair: We'll move on to some questions. Don't mind me if I keep an eye on the TV screen, just in case something happens. I'm actually paying attention, but you never know when there's going to be a vote.

Before we go into questions, I would ask, if there is a 30-minute bell, could we please stay to the end and deal with the issue at hand here and then go up at the last minute?

Mr Klopp, I believe you had a question.

Mr Paul Klopp (Huron): A question or a comment. I enjoyed your report. I enjoyed it because you had facts that came out and hit me. One of the things that has really floored me about this whole process—and we've been on this committee for a number of weeks, not consecutively—was that we've actually had people come in—and I know that there are always two sides to every story, but it really floored me that the bicycling groups, people who bicycle, are actually quite against us coming up with a law.

Your report says a lot about a lot of the other reports, but it comes out with some very interesting figures. I support this notion that we should do something and your facts just back it up again for me. In one simple line, can I say to those people—or is there one simple line—to just show them the numbers and tell them, "Too bad, so sad and carry on"? I just want your opinion.

Dr Gillett: What you would say to those bicycle groups?

Mr Klopp: Yes.

Dr Gillett: Well, I think they've been lucky so far that they haven't hurt themselves. I would just show them the figures. In actual fact, I considered actually bringing down a couple of photographs of these children and what they look like in the intensive care unit and what they're like now, but I didn't want to totally scare everybody off. I think that will, but there will always be those who will say, "It can't possibly happen to me." Unfortunately, when you're dealing with children and teenagers they are of the philosophy that they're invincible. This is part of what you're fighting against: "Well, it can't possibly happen to me, so why should I have to wear a helmet?" Those who have seen what's happening are the ones who are starting to do it. I think it's just a matter of constant education and time that will eventually persuade them of the need.

If you look at seatbelts, it was recognized for the longest time that seatbelts really helped things, but it took 10 years to get it across. Now most people wear seatbelts. There are those who absolutely refuse and who will cite the odd case in which the person's life was saved because he or she wasn't wearing a seatbelt and ignore the fact that so many more were saved and didn't have serious injuries because they were wearing their seatbelts, but we can't protect absolutely everybody all of time.

Ms Sharon Murdock (Sudbury): I want to thank you very much. Part of our whole discussion has been on the education process and how we can implement education with the implementation of this at the same time. Frankly, the graphic depiction of the bowlful of jelly within a hard box with whatever it is that you called them at the bottom—

Dr Gillett: Spicules.

Ms Murdock: —I think would probably be a really good video and would graphically and simply explain to the public what happens. You put it in terms that a non-medical person can understand. I thank you for that particularly.

I have two questions. Just in terms of the graphs and the stats you used, why was 1983 Canada's last "Injury Hospitalization by Type"?

Dr Gillett: Those are the last records they have.

Ms Murdock: They aren't keeping them now?

Dr Gillett: Well, I'm sure they are keeping them, but the published ones and the ones I had access to were published in 1983. The book that I referred to was just published last year.

Ms Murdock: I see. Okay. The other thing is one of the comments and concerns on this: enforcement under 12. We can't enforce it. You can charge but you can't convict, in terms of not wearing the helmet. Also, I don't think there are any helmets on the market for under five years of age that are CSA, or are there?

Dr Gillett: Yes, there are.

Mr Klopp: Yes, my daughter is three years old. We got one for her.

Ms Murdock: I don't know. There's some concern for under-fives. I know you didn't address it in your presentation, but given that you deal with this on a daily basis and see the ramifications of not wearing helmets, I wonder if you have any thoughts as to—

Dr Gillett: How to get people to wear them?

Ms Murdock: Yes. As you said, it has to be education, but how do you see enforcement coming about? Is it only through education or massive police mobilization, which we are obviously having problems with in the first place?

1740

Dr Gillett: I would think that if you immediately made a law and you went around and charged everybody, the police would be doing a lot of charging and you would be following up and chasing, and that in itself would probably be expensive.

I think for most law-abiding citizens, if you were stopped by the policeman and he said: "It is the law now that if you're riding a bicycle," tricycle or whatever, "you have to be wearing a helmet. Where is your helmet? Next time, you'd better be wearing your helmet," most children anyhow probably don't have the sophistication to realize that the policeman is probably not going to remember who they are the next time. I think if you take down their name and address and a notice is then sent to the parents that they should be wearing their bicycle helmets and that if they have a couple of notices the parents will then be charged just like the parents are charged if a child is in the car without the car seat or proper restraint, you're not necessarily charging a child and giving him a record; what you're doing is making the parents be more aware and more responsible.

A lot of parents will just tell their children now, "Okay, if you want to ride your bicycle, you wear your bicycle helmet." The children will say, "Well, it's not cool," and it's like: "Well, I don't care whether it's cool or not; you wear your bicycle helmet if you want to ride your bike. If you don't want to wear your bicycle helmet, I guess you won't ride your bike. We'll put it away for the year," and that's precisely what they do. The children start wearing their bicycle helmets when that kind of enforcement is laid on them.

As well, for any bicycle that gets sold, I think bicycle helmets should be considered part of your bicycle and it's just included in the price of your bicycle. That way, it's going to be a gradual change but you're certainly going to get everybody on their bicycle helmets.

Ms Murdock: Thank you very much.

Mr Len Wood (Cochrane North): Sharon basically asked my question, but first of all, I want to thank you very much for coming forward with an excellent presentation.

Just maybe more a comment than a question: As far as skidoos and motorcycles and cars are concerned, the parents are basically responsible. If a person is riding a skidoo while there's an age limit, after that he's on his own and fines can be imposed. So I'm just curious as to how much responsibility you can put on the parents when the kids take off with the bicycle and get around the corner and

take the helmet off and put it on the handlebars, or park it someplace where they pick it up on the way back home. How much of a fine and enforcement and how much police involvement are we going to have to be able to enforce something like that? That's what I'm curious about.

Dr Gillett: If you look at the Toronto Bicycle Coalition and the job it's doing, you can present bicycle helmets to children as a very upbeat and positive thing, and one of the big advantages recently has been the development of bicycle helmet covers that come in different colours and styles and stuff so that you can change it according to what you're wearing and along those lines. That has really helped as well.

Most children, if you present to them what would happen with a bicycle helmet—and one the Toronto group uses is the ripe, empty pumpkin with a bicycle helmet on that gets dropped versus a pumpkin that gets dropped without one, and how the one without gets his pumpkin smashed and the one with the helmet has an intact pumpkin head. When children see those types of things and realize, they're more likely to wear it.

I know that doesn't quite answer your question, but I think that's one way the responsibility is on the child. But you have to realize that most children don't have the cognitive awareness to really see the long-term implications or the reasoning why you're wearing bicycle helmets, and in that sense it has to be the parents and society's responsibility to ensure that they're safe.

If bicycle helmets continue to become cheaper and if there is some form of subsidy—if you look at the cost of what we're spending on health care, perhaps we could use some of that to turn around and subsidize bicycle helmets. You would be able to get them to wear their bicycle helmets, and then the parents are fined—what is it you're fined when you're not wearing your seatbelt? Is it \$58 or something? I don't know. I've never been fined.

Mr Wood: It's \$78.

I appreciate your comments and I'm pleased that at this point in time my grandson is about three and a half and he's very obedient. They have him wearing a helmet when he goes skating on the ice and they have him wearing a helmet when he's on his tricycle because he has fallen off a few times. I don't know how long that's going to last, but I'm pleased that they have started training him when he's real young because—

Dr Gillett: It's like seatbelts. If you start with the children learning that they go into the car and put their seatbelts on and they do it right from the very beginning, it's something you learn to do as part of your life.

Mr Klopp: They'll tell you.

Dr Gillett: Yes, they will. They will start to tell you.

Mr Dalton McGuinty (Ottawa South): Thanks very much for your presentation, Doctor. We've heard from other medical experts, and the evidence is always very compelling. I want to take advantage of your expertise, though, and ask you about the incidence and gravity of injuries sustained by kids using skateboards and rollerblades. Can you tell us something about those? At least, I know there was an editorial—it may even have

been in the London Free Press—advocating that we extend the use of helmets beyond cyclists to children using those other things.

Dr Gillett: I would probably agree with that, because all the children I see usually get a little chaffed about whether they are wearing their bicycle helmets and whether they wear them when they go rollerblading or rollerskating or skateboarding plus the necessary other pieces of equipment which include elbow pads and knee pads.

In answer to your question, I can only give you the example right now in our PCCU of a 13-year-old boy who was rollerblading to visit his father and was struck by a car. He is probably going to live but he is probably going to be much like Joey when he finally comes out of his coma. He also suffered a cardiorespiratory arrest at the scene. He has damage on both sides, very extensively. He has damage down in his brain stem and it was uncertain as to whether he would even live. At this point I think he's going to, but his life has been destroyed.

We don't see that many. London is in an interesting situation in that it's the children's hospital for southwestern Ontario, but there's still a proportion of children who would be flown to the Hospital for Sick Children and a proportion of children who stay in Windsor. Until recently, at least down towards Windsor, they would have been transferred across to the States and treated in Detroit. I don't think that's allowed any more and I don't think it's happening, but it was happening at one time. So we don't necessarily catch everybody, despite my dismay at that, because head injuries occur, and I think if you're going to do a good job and give them the best chance of getting back into school and being productive members of society, it's a very time-consuming and, in a sense, very expensive process because it involves so many people.

We've seen two rollerblade injuries, the most recent one I've mentioned. We haven't actually seen any skateboard injuries yet, but I'm just waiting. We've had children who have had their heads stepped on by horses and we've had hockey arena falls and a lot of other things, so I'm just waiting.

Mr McGuinty: Tell me about head injuries generally for toddlers and preschoolers. If they are going to suffer a head injury, what is going to be the cause of that? Do they fall off a chair? In terms of the statistics here, how many are related to the bicycles and tricycles and how many—

Dr Gillett: If you look at children under age two and the most common cause, there are three main causes. One of them, unfortunately, is child abuse; that's probably one of the most common causes of head injury in children younger than two. Of the two others, one would be falling and the other would be when riding as a passenger in a motor vehicle, being strapped in but the car's in an accident.

Among children from age two to about age five, falls are probably the greatest cause of injury; being hit by a car is the other, where the child suddenly darts away from you before you have a chance to grab him and there's a car coming and a child doesn't have the awareness. You start to see bicycle injuries at that time, or tricycle injuries.

It's when you get to older children, five to 10, that bicycle injuries really become one of the top contenders. Partly, I think, it's because of parents. When your children are six or seven you think they're independent and should be able to ride their bikes and you don't have to stand guard, so they're set free and they get into a few more problems. Partly I think by that age most children have a bicycle and are riding their bicycles.

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Mr McGuinty: I wonder if I can stop you there for one second. Someone once said to me that if you're going to pass a law that makes bicycle helmets mandatory, why don't you say that you have to wear them if you're on the streets, but if you're in a parking lot where there are no cars, if you're in some kind of a controlled area where you're not going to have to contend with traffic, then you don't have to worry about the bicycle helmets, because the risk has been reduced significantly.

I'm just wondering, what age group? I don't think your answer for an 18-year-old, for instance, would be the same as it would for a six-year-old.

Dr Gillett: I guess my answer is the same for everybody because, yes, being hit by a car is one of the major reasons, but a tremendous number of the head injuries and the minor ones that have all the long-term impact we're beginning to recognize are caused because they fall off their bicycles, because they skid their bicycles, because they hit a stone, because they're just learning how to ride them and they hit their head on a stone that's on the ground, or cement or whatever. I don't think there is a safe area for riding your bicycle and not wearing a bicycle helmet.

Mr McGuinty: You wouldn't have any statistics, by any chance, which would describe the incidence of bicycle-related accidents, those which involve other vehicles and those which don't?

Dr Gillett: Not off the top of my head. I can tell you at the Children's Hospital of Western Ontario we hospitalize 150 children per year with a head injury, and most of those are falls off bicycles. Of those 150, I would say there are 30 to 35 who are hospitalized into the intensive care unit and 20 of those survive to be needing a lot of therapy. That's still leaving you with 100 children per year who are just hospitalized, and I would say a good 80% of those are falls from bicycles. That's a lot.

Mr McGuinty: Just one further question: One of the things I've often wondered is, why is it that we're not concerned as well with the vital organs in the chest area? This is probably fairly obvious, but the most sensitive area to trauma, to a striking injury, is the head. Are there other injuries that—for instance, if you're hit by a car at 30 miles an hour and you have a bicycle helmet, will that save you?

Dr Gillett: Probably. That's not to say that they're not going to have other associated injuries. They might have a fractured femur and a fractured pelvis or chest contusion or whatever, but we're very good at treating those, and they regenerate and heal themselves. A bone will regenerate and heal itself, no problem. You rarely see a child who has a long-term problem after fracturing a leg or an arm. If it is

the chest wall, they might need some support, but that in itself will regenerate and they will return to normal. The brain is unable to regenerate. Once you've lost those brain cells, they're gone and there's nothing I can do to bring them back, and the recovery is so much longer than recovery of any other aspect that I think that's one of the reasons.

I guess the other is that if you look at a person, your brain is an integral part of every component of your body. That's why we can keep you artificially alive for maybe three, four, even up to six days on a ventilator when you are declared brain-dead, but we cannot keep you alive indefinitely, because without the input of the brain the rest of the organs will die on their own anyhow.

I guess I'm biased because I look after the brains and that's my specialty, but I think it is very important and probably has the longest-term impact in terms of quality of life of any of the other systems.

Mr McGuinty: One of the reasons I asked that is because when you see a police officer get out of his or her car, he's got a flak vest on. It covers them from waist to neck, but they have nothing on their head. It seems to me that, from your perspective, they're missing perhaps the most vital part of the body.

Dr Gillett: I guess the difference is that I don't know that a bicycle helmet or any kind of helmet is going to stop a bullet. The vests will decrease the impact, but to get in the amount of lead, or whatever it is in a police vest that helps prevent bullets, I think would weigh so much that the policeman couldn't keep his head up. But I don't know for sure.

Mrs Joan M. Fawcett (Northumberland): I want to thank you too, Doctor. Your statistics here are very, very shattering; as parents, we all shudder at the thought. I have to take myself back to one child of ours in particular—you seem to always have one—and I remember him going over the front of his handlebars. He was lucky: He broke his wrist only; he didn't hit his head. The same one at age 19, I guess, broke his neck and should be a quadriplegic, but he's fine. He does lead a charmed life, but I certainly support everything you are saying.

I don't know whether you know the amount of education that is going on. I know there is some education going on in the schools, but I don't know whether you realize how much there is. Would you recommend more, and should it be part—

Dr Gillett: For bicycle helmets?

Mrs Fawcett: Yes, for any kind of head injury type of thing: the skateboard, the rollerblades now, whatever.

Dr Gillett: You hit a pet peeve of mine. I don't think there's nearly enough education going on about head injuries. From my own personal professional perspective, I think most physicians are woefully undereducated on prevention of injuries, woefully undereducated on the effects and what kind of long-term problems there can be. I think that's probably true for most professionals.

Looking within the school boards and actually teaching children or educating children and parents in each individual community—it's a very scattered type of thing. I know in Toronto with the bicycle coalition, it has been very suc-

cessful in targeting East York, and it is now expanding out into some of the other areas. They are planning on having all of Toronto going through their program, I think, by next year or something along those lines.

I've tried to get the bicycling committee for the city of London interested in this issue. They are not. So the child safety committee for the city and I and the hospital and some parents, particularly one parent whose child was involved in a bicycle injury, are mounting our own bicycle coalition. We are going to model it after the Toronto one and we are going to blitz the schools over the next couple of years to try to increase the usage.

I know that in some of the other southwestern Ontario communities there are similar blitzes going on, and quite often it's the parents themselves who are taking on some of this responsibility and getting the parent-teacher associations involved. The public health nurses are becoming more involved, so I think it's an expanding and increasingly recognized role, but there's still a lot of room for—

Mrs Fawcett: You teach health and phys ed right from kindergarten up, certainly in the elementary level. It is part of the curriculum, and I can't see any reason why it can't be a part of the curriculum.

Mrs Dianne Cunningham (London North): Just on that note, that if we were all to put our resources together, I know Mr Dadamo in the committee hearings on May 4 suggested that the members should have videos about cycling and the importance of wearing a helmet when they meet and speak to their local students, because this is becoming fairly high profile. In looking into that and talking to Laura Spence at the Hospital for Sick Children, whom you would know, there is a video called Bicycle Safety Camp. It is put out by Triaminic. It is distributed through the Canadian Medical Association, the Ontario Medical Association and Sandoz Triaminic, and the video is for children ages 6 to 12. So when we start getting excited about the government expense, which will be one of the excuses people might want to use—although this committee is very open; we're not saying those kinds of things; we're trying to come up with the ammunition for people who say, "You can't do it, because we're going to have to create all this stuff"—that one could be distributed throughout Ontario, we're told.

There's another one, too: Canadian Tire. The private sector has come up with a video entitled Gearing Up For Cycling. It's more family-oriented and includes the Metropolitan Toronto Police, Dr David Wesson from the Hospital For Sick Children, and the Kiwanis injury prevention program. So we are well on our way, and that's the good news.

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Mr Chairman, I just wanted to say a sincere thank you to Dr Gillett. I had the privilege of visiting the doctor at the hospital probably halfway into these hearings, as many of us were trying to find out what was going on in our own communities, and I was tremendously enlightened that day, but I've been enlightened times 20 today with your direct answers to our questions.

We are feeling pretty confident about this piece of legislation at this point, but we are also feeling that the responsibility

for making it work is going to be on us in this committee with regard to recommendations we can make about legislation and regulations. Mr Chairman, it might be important for Dr Gillett to listen to the next part, because I think what we ourselves need to do now is decide what we can do next.

I know we have other people coming in, but we're feeling a bit frustrated in making recommendations to the bureaucracy and probably three different ministries, giving them some direction. Certainly my staff and the Ministry of Transportation staff have a number of issues they would like to put on a list, and which I would like them to put on a list that we can look at as members. They're the issues that have come out of the hearings with regard to ourselves; a lot of them came out the other day. I'm not sure what my role should be, Mr Chairman, but I'm prepared to do that, as certainly Andrea has been here making the lists, as have others.

The other thing I just noticed—it's nice to have people ahead of us—is that Anne in research here started to put a graph together. She uses the word "sample" at the top, but I think it would be absolutely great if we could maybe use this as a guide or incorporate it in some way. The issue is: who, where, the penalty, exemptions, the date it should come into force, the helmet standards, affordability and issues under that. Then we've got: Does it go into the bill, does it go into the regs or does it go into the report? I think if we could delineate some kind of report like this—I'll take the direction from you, George—it might be helpful if we did this hard work ourselves.

It might not take so long. We could maybe take it away, or we could probably work through it in a committee, but I'd look for direction from the members, Mr Chairman. It's just an idea of where we go next. We're quite a far way along. We are quite advanced in our thinking on this so far.

The Vice-Chair: This is a new experience for me, as for most of us. Private members' bills are not well known for going this far. I think anything that makes the process simpler for us is probably an asset.

I would like to ask a question that's been a pet question of mine throughout this. I have a problem with people who ride their bicycles with their children strapped behind them in those seats. I just wondered about your opinion of that particular aspect of cycling. Do you see many injuries at all from that?

Dr Gillett: None that have actually made it into the intensive care unit. There are some children who appear in the emergency department: The parent falls, the bicycle slips and the child hits his head. Fortunately, all those children had been wearing bicycle helmets, so there really hasn't been a serious injury that a child has experienced.

There are little triangular go-carts available—I'm not really sure what they're called—which are attached to the back of the bicycle; your child sits in the cart and he's strapped in, and he's maybe 10, 12 inches off the ground, so if you do slip on the bicycle, at least when you fall over the child's not going to hit his head. The problem with those are that they are a little bit more accessible to cars

than being on the back seat, so I don't think there's any really safe way. I know a lot of people look at bicycling as the route to go in getting rid of cars, and in that sense, then, the little go-cart things would probably be the best way, the safest way.

The Vice-Chair: Thank you very much.

Ms Murdock: I know it's late, but I just have—

The Vice-Chair: Yes, Ms Murdock. This is that type of committee.

Ms Murdock: This is in relation to the two examples you gave, both of which resulted in cardiorespiratory arrest. I understood from some of your comments that the bicycle helmet would probably have saved that from occurring. Why is that?

Dr Gillett: The brain controls how fast your heart beats and your respiratory drive. If you think in terms of this bowl of jelly and you've suddenly been hit and everything has been twisted, you can suddenly get a marked—well, let's go back a step again. The brain is stuck in this little box and the box itself will never expand. So you have a bowlful of jelly stuck in this box and you suddenly twist it and you rip off some blood, so all of a sudden there's more stuff going into this box than whatever is supposed to be there. The pressure inside of that box goes up really high very quickly, and when your pressure gets up high enough, you compress that part of your brain that controls your heart rate and your respiratory rate. As soon as it gets compressed, it stops telling the heart and the lungs to do their things, and then they stop and you die.

Ms Murdock: Okay. In music there is the term "contrapuntal," and I know there's—what is it again?

Dr Gillett: Contracoup.

Ms Murdock: How do you spell the word for those things on the bottom of your brain?

Dr Gillett: Spicules.

The Vice-Chair: Any further questions for the doctor? Hearing none, I wish to thank you very much. I know you're a very busy person, and for you to give up an afternoon to come down and talk to us on this, you must be extremely dedicated to the safety and the wellbeing of our youngsters. I thank you very much for your time. If there's any way we can help you, probably in the London area, I know Dianne will.

Dr Gillett: I might take you up on that.

The Vice-Chair: Just a second—I said Dianne. I moved it to Dianne immediately, realizing my error, because I happen to have doctors after me over in my area. Thank you very much for your time. I know Dianne will help you in any way, indeed if not on a weekly basis. But I wouldn't mind at all, because it is important for the wellbeing of our children. Thank you again, Dr Gillett.

Ms Cunningham has one more thing she wishes to bring forward.

Mrs Cunningham: I just thought it might be a good idea if we asked Anne from legislative research, David Edgar from the Ministry of Transportation and Andrea Strathdee from my office to come up with a report for

Monday, not in depth, but after we hear from the Solicitor General on Monday at 3:30, we could probably deal with this, at least start on it on Monday, with whatever they are able to get together, if everybody agrees that would be a good first step for ourselves.

Mr McGuinty: Yes. If we can get that chart ahead of time, it would also be helpful.

The Vice-Chair: What we can do is ask if we can get something put together for Monday.

Mrs Cunningham: If you can, we would appreciate it. I know it's not a lot of time.

The Vice-Chair: I take it from all the heads nodding around the room that this is unanimous consent by all three parties.

Mrs Cunningham: The best way to do it.

The Vice-Chair: Is there unanimous consent? Yes. Thank you very much.

The committee stands adjourned until 3:30 on Monday, when we will have the Solicitor General's office in.

The committee adjourned at 1809.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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***Vice-Chair / Vice-Président:** Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgianne ND)
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Substitutions / Membres remplaçants:

*Cunningham, Dianne (London North/-Nord PC) for Mr Jordan

*Fawcett, Joan M. (Northumberland L) for Mr Conway

Sutherland, Kimble (Oxford ND) for Mr Kormos

Ward, Brad (Brantford ND) for Mr Huget

*In attendance / présents

Clerk / Greffier: Brown, Harold

Staff / Personnel: Anderson, Anne, research officer, Legislative Research Service

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Monday 11 May 1992

Standing committee on resources development

Highway Traffic
Amendment Act, 1992

Assemblée législative de l'Ontario

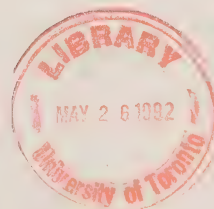
Deuxième session, 35^e législature

Journal des débats (Hansard)

Lundi 11 mai 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant
le Code de la route



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 11 May 1992

The committee met at 1552 in committee room 1.

HIGHWAY TRAFFIC AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT LE CODE DE LA ROUTE

Resuming consideration of Bill 124, An Act to amend the Highway Traffic Act / Loi portant modification du Code de la route.

MINISTRY OF THE SOLICITOR GENERAL

The Chair (Mr Peter Kormos): It's 3:52 pm and all caucuses are represented. I want to apologize to Superintendent Bill Hutton from the OPP and to Ms Irene Fantopolous, who is here as a policy adviser from the policy development branch of the Solicitor General. We were to have started at 3:30. Please come forward, Superintendent Hutton and Ms Fantopolous.

I don't know, sir, whether you want to make any introductory comments. If you do, please feel free; otherwise we'll start with questions. I propose again to start with Ms Cunningham as sponsor of the bill and then to have all members of the committee participate. We are pretty free-wheeling in this regard because we've got a fair amount of time and we want to have a full dialogue. Is there anything you wanted to say first, sir?

Mr Bill Hutton: I've never been before a committee such as this. I'm representing the Solicitor General, not just the OPP; I just want to make that point clear. I rushed down here from Brampton, according to the speed limit, because I've been meeting all week with all the traffic sergeants in the province, so I haven't had an opportunity to discuss this meeting here this afternoon.

Basically what was prepared for me for this meeting is that the Ministry of the Solicitor General supports programs and initiatives which focus on public safety. Bill 124 is one such initiative to increase helmet use and to decrease the number of deaths and injuries resulting from bicycle crashes.

While the ministry supports the intent of the legislation, the imposition of mandatory helmet use at this time may be premature. Safeguards to complement the legislation must first be put into place. This does not mean that there can be no legislation in the near future, but the following areas need to be considered before enacting this legislation.

I think the key to what we are trying to do, especially in the OPP, is community policing and discussions with the community and getting a sense of what it wants us to do. There's far more emphasis on example and education and less time and resources spent on enforcement. I think that's what we are trying to strive for in the 1990s.

Generally consideration must be given to the comprehensive bicycle review undertaken by this government, and specifically by the Ministry of Transportation. This

review takes into consideration the necessary steps that must be taken prior to mandatory helmet use. Legislation enacted specific to the use of helmets must identify and support a long-term program. This is critical because, when legislation was passed regarding child restraints, the industry was unable to supply approved car seats to meet the demand and the market was flooded with unapproved car seats. As such, there must be time for the industry's standards to be researched and developed, and any legislation that is passed must therefore take this issue into consideration.

The legislation as drafted will be unenforceable through the court system, pre-empting compliance by the general population and discouraging enforcement by the OPP and municipal police services. For example, a child under age 12 cannot be charged or convicted for a provincial offence for not wearing a helmet. It is to be noted, however, that in other jurisdictions, mainly in the United States, there have been some unique enforcement strategies in this regard. For example, in certain states the parents are made responsible for their children not wearing helmets. However, this should not be taken to mean that this would be enforceable in Ontario.

There would be increased costs in enforcement, litigation, and to the cyclist to purchase helmets. An Ontario market base needs to be developed to support the demand that will occur as a result of this legislation.

Finally, it is preferable to encourage voluntary helmet use, with increased public education and training, as opposed to mandatory helmet use, which may be seen by the cyclist as an imposition. It would be preferable to introduce the legislation once a certain percentage of compliance is reached; therefore a more incremental approach is desirable.

The above position would ensure that (1) substandard helmets will not surface on the market; (2) the industry will be prepared to meet increases in demand; (3) gradual voluntary acceptance and compliance would be encouraged; (4) there would be an increase in tendency for parents to have their children wear helmets, and (5) room for planning and growth will occur. While there is an American standard for bicycle helmets approved by the Canadian Safety Association, it is important to provide Ontario with the time to develop standardized helmets, which would promote Ontario's economic base.

In conclusion, I would reiterate that the ministry supports the legislation in principle, but that the issues we have just mentioned should also be taken into consideration before proclaiming the bill in force.

The Chair: Thank you, sir. Mrs Cunningham.

Mrs Dianne Cunningham (London North): Thank you for coming before the committee today. I wonder if I can start by handing out some of these pamphlets or passing

them around. We had some at the last meeting but there weren't enough for everybody. Whoever didn't get one last time should perhaps get one this time, including Superintendent Hutton, because I have some questions.

I think I can speak on behalf of all of us on this committee, which has been particularly non-partisan and searching for answers to this tremendous problem with regard to the statistics in Ontario and Canada, especially of young people injured on bicycles. Some 15,000 in Ontario are admitted to hospital a year, 1,500 are seriously hurt in Ontario with bicycle injuries and another 15 die.

After a number of weeks and months of hearings, the consensus before the committee, on behalf of the people who have come here from many communities—medical, home and school, Kiwanis Clubs, parents of the head-injured—has been that for some 10 years in Ontario bicycle safety has been a priority in schools, certainly with Kiwanis and other groups, which are well documented in the minutes of these meetings. The time has come for legislation. I think if we were to listen to and take the advice of the public, some 98% of those who have come before the committee, we would probably be recommending this bill to the government of the day for immediate implementation.

It's been the committee members who have pretty well agreed with some of the concerns you have today; that is, we would like to have all the answers before we proceed. So what I'd like to do is ask you some questions along the way on some of the points you made.

You'd like to see more education and ultimately less enforcement, which would be great. That's certainly the view of the committee, I can say unequivocally, in that we've been talking about maybe as long as a two-year implementation period. I'm wondering what you think about one or two years.

1600

Mr Hutton: Bob Scott, who works for me, put together a paper for the Solicitor General and was suggesting more than five years. I don't think that's realistic. Two years? I don't think we would have any trouble with a two-year period of introducing this legislation and then trying to get compliance. Two years would be a lot of time to get into the schools, where we should be encouraging this type of mandatory helmet use.

I think we also have to start getting into large corporations and ministry buildings to talk traffic and traffic safety. When I talk about traffic, that's also bicycle and bicycle safety. I'm only new in my position as the director of the traffic and marine branch, but it seems to me that in terms of human and equipment resources, do you want to sit out on the highway stopping 50 people in five hours or do you want to be in a position to have five or six officers sitting at a service centre talking to 2,000 people an hour, encouraging them to wear seatbelts or slow down or whatever?

I think a two-year time period in regard to getting to the users of helmets would be a suitable time period.

Mrs Cunningham: In general, we have been talking one or two years and at the end of these hearings we'll sit

down together and decide what we will be recommending with regard to the legislation, but I'm happy to hear you think two years is practical and reasonable.

With regard to what you had to say to us today, you talked about this comprehensive bicycle review. In the last couple of weeks we have been trying to find out what that is. We can't find out. We don't know what it is. We don't know anybody who sits on it. We don't know anybody who knows anything about it. We've all been waiting to hear about it and we've wanted to help actually. The Toronto cycling club has been very interested in participating. I'm wondering just what that means.

The Chair: Some people have even referred to it as being chimerical.

Ms Irene Fantopolous: I can answer that. Basically it's an interministerial committee that's been working on a comprehensive study in terms of bicycle helmets and bicycle policy overall. Nothing has been formalized in terms of that yet, but it does include a lot of the issues that have been spoken about today as well as in other committee hearings, as I understand from you. It's not a final report in that sense, but we are looking at the various issues outlined today.

Mrs Cunningham: Who are the members of this interministerial group?

Ms Fantopolous: There's the Ministry of Transportation—

Mrs Cunningham: Yes, but are there people?

Ms Fantopolous: There are people. I've just been involved in recent weeks on this. One person from Transportation is David Hunt and from the Solicitor General's—

Mrs Cunningham: Perhaps what you could do is provide us with a list of the people, just so we don't have to take up a lot of time and so you're not put on the spot as far as guessing names. It would be helpful to us.

Ms Fantopolous: Okay. To you?

Mrs Cunningham: Yes. Also, if you have any minutes or any report at all, we would be most appreciative of it. I think this committee feels particularly privileged in having had some of the best experts in the medical field and in the helmet-producing field, business and industry, and certainly from the volunteer fields who are out there educating now and spending their time doing that in some communities.

We've been particularly fortunate to have people take time to come from all over the province to speak to us. I have to tell you that we didn't seek them out: If their names came forward as experts, in one or two instances my executive assistant, Andrea Strathdee, would follow through on the advice of the committee, but we didn't seek people out. They felt this was an important enough issue to come forward, so members of the interministerial committee—from the very beginning we had hoped they would come and we felt that maybe two or three of the ministries were represented here during the hearings, but certainly not any members of this group. It would have been a great opportunity for them to hear at first hand, as we did. But

I'm just passing that on because it was mentioned by Superintendent Hutton.

With regard to the approved helmets, this pamphlet is the most recent one we have. A lot of pamphlets have been put out by drug companies and medical groups and distributors themselves, but this would be one—I'm not pushing it in any way, I'm just saying that at the bike ride in London this one was handed out. What interested me was that there's at least one distributor who's ahead of us, so we shouldn't be sitting back.

First of all, this particular helmet, this Carlyn helmet, is an approved helmet to the best standards we can get, I think; according to the group that talked about standards, it would be the best you could do, to get one that has been approved by CSA, Snell and ANSI. I think there will be more distributors like this coming forward. This was an independent person, a woman who works out of her kitchen. These helmets all come from Quebec, they're all Canadian.

One of my great concerns personally has been, as I've travelled through some of the retail stores—I mentioned one last time, but I didn't mean to single it out either. I hope people don't get too defensive. It doesn't matter where you go; you can pick these helmets up now, and the market is flooded with helmets that are not approved by these three standards. It's our intention to stop that in some way. One of our great hopes in this committee is that we get some Ontario-manufactured helmets.

I'll take direction, Mr Chairman, on this one too, because I'm not quite certain when you talk about the date that this bill is proclaimed and then enforced. I haven't asked that question yet, but we'll need an answer on it. Do you proclaim it and then enforce it, or what do you do? For instance, if we want this bill to go through this spring can we in some way build the lead time into it, or do we have to wait two years to have it proclaimed? That's a question for the legislative researcher.

We're going to be looking for direction here. It says in bold print here, "CSA is not yet equipped to approve infant helmets." I'm just wondering what you think of the status of this and the fact that we've got them in Ontario and whether you were aware before you came to this committee that there's a great deal of movement here. Certainly there aren't any manufactured. Just an opinion on that, because of your concerns about approved helmets.

Mr Hutton: I guess I've been aware of this committee and helmet safety and bicyclists. I am a member of the board of directors of the Council on Road Trauma in Hamilton and I know they've been a major pusher of this type of legislation.

Mrs Cunningham: They have.

Mr Hutton: Personally, to be totally honest, I have never gone into a store and looked at the helmets that are for sale and I don't know how much research the ministry has even done on it. I know that Bob Scott, who works for me and is a member of that joint interministerial committee, has been involved the last couple of years and is also involved with a group in Mississauga in helmet usage for bicyclists. He was to be here today representing the minis-

try but is at an inquest in Sault Ste Marie. He is far more knowledgeable on these issues than I am.

I'm sorry I can't give you a ministry position as to how much research they've done, other than that they voiced those concerns of, "Are they available in Ontario?" and "Let's not get into the same problems we got into with helmets for motorcyclists and car seats for infants." There were all kinds of them out on the market and in the vehicles. It wasn't until after we started investigating fatalities that we found out they weren't safe, and not even approved. So we don't want to get into the same predicament with the helmets.

1610

Mrs Cunningham: Perhaps it would be appropriate at this time to tell you that at our last meeting, the committee wanted as part of our process to take a look at some of the questions we would have to answer with regard to each issue; for example, who would be covered by the legislation and who would be exempt; where this legislation would apply with regard to roads and schoolyards and what not; what the penalty would be; how the legislation would be enforced, and the date to come into force. We get into the whole issue around helmet standards: which standards to approve; whether they should be mandatory; helmets for under-five-year-olds. So we are going to answer those questions to the best of our ability.

In the meantime, as these are issues laid out in a document we're going to look at later, I would ask you, Superintendent Hutton, and Ms Fantopolous, if you could in fact take this away and come back with some answers with regard to both of your areas of expertise. Certainly the Ministry of the Solicitor General is going to be asked to answer these questions, so it's here, and the bike helmet issue is part of it. So I think that's appropriate.

With regard to children under 12, perhaps you could help us with that now. You mentioned that there were American standards or enforcement strategies where parents would be responsible. We're aware of them. Every member of this committee has researched every state and every jurisdiction that we know, that we can find. So we know there are interesting strategies with regard to making the parent responsible to the extent that if you are stopped, you have to appear within 48 hours with the bicycle helmet. That would be the first step. I'm just wondering if you had thoughts about those or if there are any precedents in Ontario with regard to any other kind of enforcement around appearing at the scene with your driver's licence. Do you get a chance to show up with your driver's licence in Ontario if you haven't got it? Is there any precedent for this?

Mr Hutton: In most of the jurisdictions, if you got stopped and you didn't have your driver's licence, you could be given 24 hours to produce it. In the insurance, it used to be 72 hours, so some things have changed. It depends on the attitude of the person you're stopping and the attitude of the police officer as to whether it is a policy or is not.

I know we just got a Canadian national award for one of our OPP officers. During Seatbelt Enforcement Month,

if you weren't wearing your seatbelt, you were given an offence notice. However, if you showed up in the detachment during the week and viewed a video on seatbelts and there was an agreement with the crown attorney in that particular jurisdiction, then the charge was dismissed or withdrawn.

So certainly if you were to stop a cyclist who was not wearing a helmet, it would be to everybody's advantage if he or she had an opportunity to come to the police station, if it's open, and view a video and to bring a parent along at the same time, within 48 hours or a weekend or whatever. I would see nothing wrong with that type of procedure. I would encourage it.

The Chair: I don't know whether you're prepared to comment on this because it might be something Ms Fantopolous, counsel for the Ministry of the Solicitor General, could better address. I understand there are some sections of the Highway Traffic Act that until recently created a vicarious liability; that is, the owner of the car was responsible on an absolute basis. But the courts and the appellate courts have had things to say about that, especially in view of charter arguments that were made. That might be one of the problems with the proposal about having parents liable for their children's—criminally or quasi-criminally liable. Research has asked me to direct this question to you. That might be something counsel for the Ministry of the Solicitor General could address, especially in view of what the courts have done with those vicarious liability sections in the Highway Traffic Act.

Ms Fantopolous: Okay, we'll have a response for you.

Mr Hutton: There are still several sections in the Highway Traffic Act where the owner of the vehicle is charged rather than the driver.

The Chair: Which would be the parallel of what Ms Cunningham was trying to—

Mr Hutton: Yes, that's correct.

Mrs Cunningham: There are, I think, a number of other questions, but my colleagues on this committee will probably cover them, as they normally do. I've certainly asked the three I was most interested in. If my colleagues don't cover them, I'll add to it, but they themselves normally have pretty interesting questions, so I'll pass.

Mr Paul Klopp (Huron): Good afternoon. You mention in your preamble something about car seats for young children. That was part and parcel of the seatbelt law, was it, that you had to have car seats for young children? Am I correct on that?

Mr Hutton: Yes, but even prior to that, when car seats came into vehicles, there were several that were never approved.

Mr Klopp: Okay. Back when the helmets for motorbikes were put in place—I wasn't old enough; maybe I was 10 or 12 years old. How did that process go in place? Do you remember that? Were you involved in that at all?

Mr Hutton: I remember being part of it. I rode motorcycles for five years on the OPP itself. When it first came in I remember that the legislation said you had to wear

one, and they were wearing them on their arms and legs and not on their head. That's what happens when you don't cover all the bases. Actually, the week I was on training, we had a helmet that was not CSA-approved.

Mr Klopp: Was that legislation put in place like, bang, here it is today, and tomorrow morning at 12:05 it's now law, or was it phased in?

Mr Hutton: I don't think it was phased in at all. It just became law and you had to have a helmet.

Mr Klopp: The police had to grapple with that law for a long time.

Mr Hutton: Just that one example I gave you—on the highway, you had to be 16 and have a driver's licence. You could be stopped and had to identify yourself because it was a motor vehicle and you had a driver's licence. Even today you would know the person who was identifying himself as Joe Public and had a picture of Joe Public. You knew that was the person.

Mr Klopp: What I'm trying to get around is that we can learn how not to put in a good rule, because my sense is that at that time it was hammered in place. Everybody agreed it was a good law, but because they didn't do the education, everybody rebelled against it: 17- and 18-year-old friends of mine who don't normally break the law. They were told next week they were going to have to wear a helmet and they abused it to the nth degree. Now we don't think twice about buying a helmet and throwing it on your head when you get on a bike. Nobody thinks about that.

My question is around this whole idea. You're really keen on the idea, from what I understand, of putting in some form of real education program and being serious about promoting this idea of a helmet law. I believe we all are. But for heaven's sake, to go ahead and pass a law tomorrow and say "Next week at 12:01 it's law" would probably be the wrong thing to do if you really want to get people to—

Mr Hutton: Buy in?

Mr Klopp: —buy in.

Mr Hutton: I can't tell you. You'd have to go back and research the motorcycle issue. How many motorcyclists were already wearing helmets before it became law?

Mr Klopp: Very few.

Mr Hutton: We don't know that. My perception was that a lot of them were, whereas with cyclists I believe the figure is 5%. The challenge today, even in policing, is that if we're at 83% in seatbelt usage, how do we get to 85% and 90%? We've set our goal at 95% by 1995. It's a lot harder to get that next 3% or 5%. It won't be too hard, I don't think, to increase the 5% usage of cyclists up to 40% or 50%, but at what point are you satisfied and then all of a sudden you make it the law and you start enforcing it?

1620

Mr Klopp: So in short, you like the idea of first being serious about the law but graduating it, advertising, putting dollars into the young people, and from the police point of

view, for the best energy use of your time, that would be also the right way to go.

Mr Hutton: Yes. We discussed this at great length today. I'm not saying wearing a helmet on a bicycle is another program, but if it's another program that has to be enforced, then it's another program that won't get much attention unless you start having a lot more serious accidents.

It's not a case of doing more with less. What I'm trying to emphasize is, let's do less but more of that less. This month if it's seatbelts, then I'm not going to be pressuring the people in the field to come in with radar charges and impaired charges and all those other charges as much as if the emphasis this month was on them.

If we're serious about seatbelts or whatever other program we're serious about, then let's be concentrating on that from an example point of view, an education point of view and an enforcement point of view. The more programs you send out the more frustration there is and the more reasons it gives them to say, "We don't have enough people to do all these things and here you are forcing another program on us."

I think every police service in this province has an excellent record of getting into the schools and delivering the message, and that will continue. I don't see us taking those resources away. That's the best place to start, in my opinion, and I don't think you'll get too many police chiefs or anybody else opposing that opinion. Then build on it from there.

The children start encouraging the mothers and fathers, just like they do with the seatbelts, to start wearing them too: "Here you are telling me to wear a helmet, but how come you're not?" So they deliver the message home and then you expand it from there. That's my opinion.

Mr Daniel Waters (Muskoka-Georgian Bay): I think I'd like to talk a bit about enforcement. We've had people coming before us making the accusation that the police don't enforce the bicycle laws now, so why would they enforce these? When I go around the city of Toronto—I find more so here than in my home town, but then again it's a small town and it doesn't have as many stop lights and that—then indeed cyclists are not obeying the law.

I was wondering how the OPP would deal with the enforcement of this, given that we do the two-year lead-in and all of those things. How do you feel the OPP would deal with the enforcement?

Mr Hutton: Because most of our enforcement is in the small towns—

Mr Waters: That's why I asked, because you patrol my town.

Mr Hutton: Certainly we wouldn't be running into them on the 400 series highways because they're not allowed there in the first place.

I don't disagree with your comment that you see a lot of bicyclists committing all the offences. First of all, I don't think they're aware that a lot of the offences they're committing even pertain to them and are covered in the Highway Traffic Act. When you get a driver's licence, you learn the rules of the road. When you start riding a bike,

who's teaching you anything? Where do you learn the rules of the road? We don't do that.

Mr Waters: But I seem to recall when I went to school that was probably one of the first times I ever had contact with the police. An officer came into the little community of Windermere, which is like 50 houses if you're lucky, on a good day in the summer. They came into this little one-room school back then and indeed spent a day going through the rules of the road. Don't they still do that?

Mr Hutton: It's been a couple of years since I've been out in the detachments, but they're getting into each classroom about 40 minutes a year. Again, it's all these programs, you know, about awareness of strangers stopping you on the road. I'm sure they're really emphasizing that today. That may be the only 40 minutes they're in your school today and they might not have talked about bicycle safety or crossing at a pedestrian crosswalk.

Even though they're in there, I don't know how much time they would have to cover these things, but again if this legislation's going to come in and we're saying the first thing we've got to do is educate the public, especially the young kids, then we'd better be doing it. We'd have to emphasize that, "Here comes some new legislation," and we'd have to spend some time during the course of that 40 minutes or three visits a year—maybe it's more in some smaller areas—to make sure that part is covered.

Getting back to enforcement, we're having a hard time convincing some police officers to enforce seatbelts, because it's \$78. When it was \$25 it wasn't a bad fine and people would accept that. Now it's \$78 and people are really getting upset. But, I mean, 12 or 13 years later they should be wearing them by now, so I don't know why they're getting upset.

I've had police officers admit to me that they're reluctant to charge somebody, and again it gets back to education; it gets back to the way we're doing business. At the end of the day your supervisor may want 10 radar charges and I don't care who else you stopped and warned about wearing a helmet on a bicycle or a non-moving violation.

These are the kinds of things from a managerial point of view and the day-to-day detachment philosophies getting back and giving credit for everything they're doing, whether it's talking to 100 people or laying one charge. I mean, what would you sooner have your people doing?

Mr Waters: As the OPP expands its community policing in the small towns across the province, I seem to recall I saw a couple on their bicycles. Actually, I come from Bracebridge, so I believe we had some community policing going on last year on bicycles. Are they going to expand that in the communities?

Mr Hutton: Again, if you adopt the philosophy of community policing, it's what the community wants. If the community wants you out on bicycles patrolling the paths and in between townhouses and all those other good places, what better way to get around than on a bicycle?

I know we are expanding it. I see more and more requests for bicycles. I've actually seen more and more requests for motorcycles because they can get off the main

road and into those areas where in the past we haven't been visiting because we drive along in a car and a car can't get to a lot of these places. But community policing is what the people want you to do.

In your town if bicycle safety is the concern of the day and the policemen are adopting the philosophy and listening to the community, then this month they should be putting their emphasis on bicycle safety and not the speeders going down a highway where there are no accidents. So by educating the kids and by them educating the parents, it becomes a community concern. They should be emphasizing that program until they're satisfied there's a large compliance.

Mr Waters: So what would be the two or three main points you would want to see in the bill or would want the bill to deal with if we go ahead with it? Is there anything from your perspective that should definitely be in the bill, maybe not as part of the bill but somewhere so that it sets down a set of rules or something? Let's say the bill or the regulations.

Mr Hutton: I'm not sure what you are asking. What should the section of the Highway Traffic Act say?

Mr Waters: If you could write the law, from the perspective of the Solicitor General or the OPP, is there anything that they would definitely want to see in there?

1630

Mr Hutton: I've seen a draft of the section you're addressing and there's nothing wrong with the section, nothing wrong with the wording. All we're saying is, give us some time to make sure there are proper helmets out there and there's proper education. The other issue that has to be addressed is, how do you deal with enforcement of those under 16 and under 12?

Mr Klopp: How would you do it—you're out there in the field—if you could sit down and make this law or write it up so that you could enforce it? I'm looking for your ideas. Nobody will pin it on you.

Mr Hutton: I was already asked, "How do you deal with those under age 12?" and if you can't enforce it through courts—and I don't agree that's the way to go—then you have to put some rider in there that either the child doesn't ride the bike any more until he or she gets a helmet or you deal with the parent and the child through a video or through an educational component such as that.

The Chair: Research has asked this question, and perhaps, Ms Fantopolous from the Ministry of the Solicitor General, you might ask your counsel to direct their minds to it: Would it be within the jurisdiction of the province to give a police officer the power to seize on a discretionary basis a bicycle that is being operated by an unhelmeted rider? You see, that wouldn't involve the laying of any charges, so the age of the rider would not be material. But the power of the police officer to discretionarily seize that bicycle and the route for return of the bike could be the sort of things Superintendent Hutton is speaking of. Research would be interested in hearing what counsel for the Solicitor General has to say about that.

Ms Fantopolous: We'll get a response for that.

Mrs Cunningham: Just a bit of an analogy which my friend Kimble Sutherland will relate to: We have a towing company in London that seizes your car, puts it behind locked doors and you pay \$98 to get it out, and it doesn't even represent the public.

Mr Klopp: That's why Kimble got a new car. His other one was only worth \$50.

Mrs Cunningham: He probably knows this one intimately. It's a terrible analogy.

Mr Kimble Sutherland (Oxford): It's \$98 and then it's a \$12 cab ride from your riding over that.

Mrs Cunningham: But when you think of what people can do to each other—I raise it sort of facetiously. There are things happening out there that aren't helpful when you talk about fining people. We have the private sector doing it, unreasonably so, in my view. I think you made quite an impact on most of us when you talked about the seatbelt fine in place now as being a lot. We don't want to get into that here for bicycle helmets. That's not what we're trying to do.

Mr Hutton: Under the old Juvenile Delinquents Act we had to go to the courts and convince them to allow us to charge someone under 16 say \$5 for going through a stop sign or whatever when I was in the small town of Winchester, because you'd have to take that young offender all the way to Cornwall. So there was all my time, they'd have to go to the parents, and they lost work. These are the kinds of things I hope we can guard against.

I've had an opportunity to visit a few of the young offenders courts in the last four or five months and they are all-day sessions. I was in one just last week and there were 133 names on the docket. Are we going to start piling up the docket with children between the ages of 12 and 16 for not wearing a helmet on a bicycle and then be in court all day with the officer and the parents?

I don't know if the Attorney General's office has looked at those kinds of things, but how do you deal with that type of enforcement? I would suggest we stay away from that.

Mrs Cunningham: That's why you're here. You're obviously influencing us because we're nodding our heads as you speak. There's more time too, so you can give us more ideas today.

Mr Waters: I was just going to say that if indeed you decided that you were going to charge the adult—I had to slip out of the room and I didn't know that you and the Chair had some interaction on this topic, which is just fine by me—if a parent, let's say, bought a child a helmet and when he left the house the helmet was on and he was stopped, I think it would be difficult to pursue it with the parent, as in charging the parent. But if the parent refused to supply the safety equipment as specified in the law, do you think at that point the parent should be charged, if you're going to have an enforcement angle on it at all?

Mr Hutton: The first time, I'd say no.

Mr Waters: Okay, but let's look at time two. The first time is, "Produce a helmet or pay a fine," and I would say that is something that is already out there in one of the

other jurisdictions. But let's look at time two or time three. We've gone all of the nice ways or the soft ways of trying to encourage them to abide by the law and the parent is still saying, "As an individual, I feel that it's an infringement of my rights and therefore I'm not going to purchase a helmet for my child." At that point, what do you do from your perspective? We're looking for some guidance or some ideas as to where we should go.

Mr Hutton: I would hope by now it would be an easier sell, because I've been involved for 25 years in sports and in hockey. Show me a parent today who says, "I'm refusing to allow my son or daughter to wear a helmet to participate in the hockey game tonight." Again, how many parents are aware of the tragedies that are going on in Ontario as a result of kids and adults and everybody else getting involved in accidents with cyclists?

In talking to them, I would hope that the parent would not be opposed to a child's going out on a bicycle with a helmet on. But if you're asking what you do the second or third time, if you charge them and bring them into court, what's the message the judge has to deliver to them? How can he convince them any differently from you or I talking to a parent at the doorstep? I don't know.

Mr Waters: Probably a fairer question of the Attorney General, right?

Mr Hutton: Yes.

Mr Sutherland: Of course, if you made it illegal to sell a new bicycle without selling a helmet with it, that would solve the problem too, but that might be considered a little bit draconian.

The Chair: The Ministry of Consumer and Commercial Relations had been invited to come here to address those very sorts of concerns, but its absence has been conspicuous.

Mr Hutton: I did think of that too while you people have been asking me questions.

Mr Klopp: It was brought up the other day actually.

Mr Sutherland: You used the analogy in the sports field. I know a lot of arenas now won't let you go on and play without wearing a helmet, so you get the conditions building up there.

I want to come back to the enforcement issue. I think we all understand the difficulty of trying to balance priorities in terms of policing—do you go after impaired drivers this week? do you go after speeders this month? do you go after the seatbelt people another week or another month?—and in terms of how you manage that with the resources you get.

I guess my sense would be, though, that simply by passing the law and having it there, if an officer is out doing his duty—I don't know, maybe he's got speed traps set up, or whatever the correct term is for them, checking on speeding drivers, but he's sitting there in a stationary position, certainly in an urban setting anyway—if someone goes by without a helmet, he can easily just as well, while he's out there on duty, go and do that. If we're going to have 100% enforcement from the day this thing is proclaimed or that it would be carried out, it would seem to

me that just the fact of passing it and it's being there and police using their discretion as they have with seatbelts, you would get us up to a compliance factor that you want to look at.

While 83% is probably not where we want to be seatbeltwise, obviously it's certainly far better than where it was before we had mandatory legislation for seatbelts. Enforcement of that other than when you have your specific blitzes put on generally is—well, maybe not. I don't know what the directives are in terms of it being compulsory to charge people on seatbelts or whatever, but it was my understanding that there was some optional nature there and it's enforced differently at different times. I don't know for sure, but I'm told if someone's pulled over and the police are just asking and he gives an officer a hard time, then maybe he'll get charged with a seatbelt offence or that type of thing.

It would just seem to me that by passing it and having it out there with the option to enforce, that increases compliance by itself. As soon as you get a few people in the neighbourhood finding out, "Yes, I got charged for not wearing my helmet," that increases compliance by itself too.

1640

Mr Hutton: It's been my experience people don't go home and tell anybody they got charged. It's my experience that if tonight you're out at a RIDE spot check and get through it, you'll tell a lot of people the next morning. I don't hear too many people going home and saying, "I got stopped at a RIDE spot check last night and got charged with impaired driving."

Mr Sutherland: But the fact that I would tell people, "Yes, I went through a RIDE spot check," would that not in fact increase awareness that you are out there, you're doing the program and, yes, it reminds me about the fact that I'm not supposed to be drinking and driving? Likewise if it got out there, "Oh, yeah, I saw the police officer pull over so-and-so on his bicycle for not wearing a helmet."

Mr Hutton: The other problem you bring it up is, how do you stop people on bicycles? That's another big concern. We've had problems for years enforcing the Motorized Snow Vehicles Act, because how do you catch them? So how do catch bicyclists? Having some experience, even on motorcycles, trying to stop other motorcyclists, as soon as you get off the bike or as soon as you get out of the car, they're gone. How do you identify these people? You said you wanted some points.

Mr Sutherland: I guess we can accept that. I would say generally, though, I certainly hope the majority of people are law-abiding citizens, so if a police officer puts his lights on, they pull over and comply with the fact he's caught them for speeding or he's caught them for some infraction of the Highway Traffic Act, and therefore you're going to catch the majority of people—

Mr Hutton: Because the majority are on the road. These cyclists are on paths, on sidewalks where they shouldn't be, in between buildings and everything else.

Mr Sutherland: So you're saying the level of compliance will be far lower in this because of the ability of cyclists to go where police patrols may not normally be going?

Mr Hutton: It'll just be harder to stop these people and deal with them, whether, as you say, we have discretion to talk to them or charge them.

Mr Sutherland: In terms of the education stuff—I guess I'm a little younger than some of the other members over here—I remember seeing the bicycle safety films. You also have, at least in my community, the Optimist clubs, who have been very good with their bicycle safety rodeos.

It would seem to me that the education component wouldn't be that difficult to fit into, in terms of what service clubs are doing and in terms of the fact of the police visits that are going on within schools already. I know certainly in many of the areas the police officers, at least the OPP detachments and other ones, always have booths set up at the fairs, that type of thing, in terms of education. I was just wondering how much lead time you think you really need in terms of education before enforcement, or can they not be going along now on the same path?

Mr Hutton: Hopefully, we're doing both at the same time in any program, but the emphasis would be on education rather than enforcement. I would hope we're not getting caught in a numbers game where somebody higher than me is saying at the end of the year, "Well, where's all the charges for not wearing helmets on a bicycle?" versus, "Yes, but we've talked to 400,000 children, or groups of people." I think you'll see, especially in the last two or three years, there's a lot more emphasis on using those groups to work with us.

We're even entering into a volunteer program where people in the community have been coming in and staffing the detachments at night just to keep 'em open. While they're there, it doesn't create that much of a problem if you're saying you have to come in to the detachment within the next couple of nights to view this video. Whether it's a police officer showing it to you or confirming you came in or volunteer people, then it's done.

Mr Sutherland: I'd certainly think that Mrs Cunningham would not be demanding those types of statistics of how many charges you had laid in a year versus how many people you had educated. I understand those difficulties because the public's expectations when there's an issue—certainly in my area representing the riding of Oxford where we had the stretch of the 401 with many fatalities and cross-median fatalities, there was a great deal of pressure put on the OPP detachments covering that area to come up with more enforcement, more patrols, to watch speeders and control that type of thing. I certainly understand that difficulty, and I hope that wouldn't be the case, but just by the simple fact that if you have this bill passed and people know it can be enforced you'd see tremendous increases in compliance.

Mr Bob Hugt (Sarnia): Very briefly, ever since we've begun discussing this bill in committee, I've been keeping my own unofficial bicycle poll and I'll be pleased

to tell you that for the first time in about six or seven weeks I actually saw a bicycle operator with a light on his bicycle that worked at night. I saw that the other night. It was quite an occasion for me.

The point I'm trying to make is that there are many, many more things involved besides the use of a helmet and I'm quite concerned that we don't forget all those other things, because the helmet's important. But I think there's been a fundamental change in the use of a bicycle between when I grew up, which was in the 1950s, and the use of a bicycle now. It's much more a regular commuting vehicle than it was in my day. Then it was a recreational vehicle that you were forced to use until you could drive a car. That's changed significantly, I think, over the years, and the number of people who use bicycles as regular commuter vehicles in Toronto is evidence of that.

I think there are many things we have to deal with other than the helmet issue. The helmet issue is important, but since I've been keeping my unofficial poll I think the most hair-raising experience was being almost run down on a pedestrian crosswalk on Wellesley Street by a bicycle operator at night who had no light, but did have a helmet; I managed to see that as he disappeared into the darkness. He had no intention of stopping for those flashing and yellow lights, none whatsoever. I guess I don't know what a helmet would do for that individual, I really don't.

My question to you is, how do we address all those other issues and do you think there should be some kind of examination, some kind of licence before one operates a bike today?

Mr Hutton: Actually, as you were talking, I thought you were going to say you saw a person with a helmet and that made him a lot more safety conscious and you wouldn't see all these other offences, but obviously you just disproved that thought. At what age would you start?

Mr Hugt: I don't know. Obviously, that wouldn't apply to small children, but if you get to an age where you can operate a bicycle unsupervised on public roads, we've got some real problems. Safety consciousness about wearing a helmet, I think, is great, that's admirable. But what does it do for the people whom I've been experiencing on a daily basis since we've started to talk about this bill?

For example, in night operation of a bicycle many of those people had helmets but no lights, or they went through the flashing yellow lights on a crosswalk, or they disobeyed a red light, or were in the middle of an intersection where they clearly shouldn't have been, helmet or not.

When we get to the point where today, unsupervised, you're going to use a highway which is very heavily travelled—for example, our city streets in Toronto—and do that unsupervised, would it make any sense to at least have an education or licensing component at that point? Age 10, 12—I don't know. Pick an age. Obviously five is not the age.

1650

Mr Hutton: Did you ask that question of the Ministry of Transportation, since it's to do with licensing?

Mr Hugt: No, I didn't. I just wanted your views.

Mr Hutton: I'd be interested in knowing their response. At what age is it a right to ride a bicycle on a street? I don't disagree with the picture you're painting of our everyday bicyclists. Perhaps, with all the programs we have, there's too much onus on or recognition given to the officer who goes out and catches the high speeder and not enough for stopping the young child or adult on a bicycle and bring it to their attention. Maybe some of them don't know; I don't know.

Of course ignorance is no excuse, but again, what credit do they get at the end of the day for stopping five bicyclists and having a chat with them and saying: "You're driving down the wrong side. Do you know it's an offence to drive on the sidewalk?" With legislation such as this, it may be time for us to re-emphasize the importance of bicycles and encourage our people to get more into these programs and get credit at the end of the day for doing it.

Mr Huget: What I'm leading to in a roundabout way is if the education component around helmets is deemed to be important; in other words, we've got to go out for two years and educate people on the use of helmets. Is education on the Highway Traffic Act, the law and road safety just as important? Is it a mandatory component of that helmet education, because I think without the other it is of little or no value. I would hate to see children educated in the use of a helmet—which is an admirable thing; I agree with that—without education on the rules of the road and the dangers of what's out there, and in the case of older individuals who can understand, there are laws that have to be followed. I think there needs to be that educational component as well.

Mr Hutton: I think we're learning too from the provincial and even federal initiatives we've had in the last couple of years, whether it be Seatbelt Month or Impaired Driving Month.

What we started to do is give a handle to those drivers and say, "This is the law and here are the sections of the Highway Traffic Act that pertain to seatbelts." You could do the same thing with bicyclists. I am sure even the expert cyclists in this province would be totally unaware of all the sections of the Highway Traffic Act that apply to them. I've asked myself the same question many times: Are we covering all those things in the educational component in the schools? If we are, then why aren't they listening to the police officer delivering the message?

Mr Leo Jordan (Lanark-Renfrew): Thank you, sir, for coming out this afternoon. I have two questions I would like to ask you. Which would you sooner see, the law brought in now, followed by education two or three years before enforcement, or two or three years more of education and then the law being brought in?

Mr Hutton: I think we're suggesting that the two or three concerns we have been dealt with first and then the legislation.

Mr Jordan: Are you talking of two years' education and then bring the law in?

Mr Hutton: Not only education, but getting these other issues addressed about enforcement, market avail-

ability, standards and then the legislation and start enforcing it.

Mr Jordan: Would you see it being detrimental to the legislation if we were to bring it in sort of prematurely, followed by education and these other—

Mr Hutton: What lead-in time do you allow in the legislation for people to go out and purchase these helmets? Then what do you do with all the people who cannot afford it?

Mr Jordan: No, just to alert the public that it's on the books and that it will be enforced, that it's there and that as soon as the education, whether it's two years or whatever, and the availability of the equipment are there, you'll start gradually enforcing it. Is the fact that it is on the books going to help us get on with the education and these other requirements?

Ms Fantopolous: In terms of the bicycle review policy we've been talking about, I think all these issues have to be addressed. Whether legislation would encourage public education more, as opposed to—

Mr Jordan: That's what I'm wondering.

Ms Fantopolous: That's what you're trying to say. That would depend on what priority this government gives to this issue. Again, resources would have to be deployed in terms of enforcement. There might be a backlog in court cases; we don't know. All those kinds of issues have to be dealt with. Are we, at this particular point in time, prepared to enforce that legislation? The position of the ministry is to obtain voluntary compliance. Let the people do it on their own and then enact the legislation.

Mr Jordan: You're saying enact it, but can we have—

Ms Fantopolous: Or proclaim it at a later date; I think that's the position of the Minister of Transportation. If the bill does go through and is enacted, it should be on the proclamation date. We'll have from one to two years.

Mr Jordan: We should start enacting it as of the proclamation date?

Ms Fantopolous: That's right. I believe that's the position of the Minister of Transportation.

Mr Jordan: I was wondering if we could do it the other way; have the bill brought in and proclaimed but enforcement not take place for a period of time.

Ms Fantopolous: I don't know the percentage of resistance you'll get from the public if you impose mandatory helmet use. They may say: "Well, it costs \$100. I don't have \$100 to pay for a helmet."

Mr Jordan: We would phase that part of it in.

Ms Fantopolous: It depends on how it's brought out to the public. We would prefer to educate first and then bring in the legislation.

Mr Jordan: My second question is regarding the municipalities. We were talking about their riding on the sidewalk. I'm walking across the park; they're on the walkways there. Some have helmets, some don't. They don't have horns or anything. They just come up behind

you. If you happen to step in the wrong direction, you're knocked down.

Why would the police be involved in that type of enforcement? Why would it not be a bylaw enforcement officer from the municipality who would enforce a law such as this? Just because it's included in the Highway Traffic Act, if it is to be, why couldn't each municipality be responsible through the bylaw enforcement officers in that town? They know where the kids are riding, the alleyways or the sidewalks, whereas the police, at a much higher rate of pay normally than a bylaw officer, I know in our town, don't have the same opportunity to go and talk to the children or know where the activity is, as people driving around in a car.

Mr Hutton: If it's a bylaw, then it can be enforced by the bylaw enforcement officer. If it's a provincial statute, it can't, to my knowledge. I don't believe he's identified as a police officer in the Highway Traffic Act.

Mr Jordan: Yes, but for giving tickets for winter parking, they come under the Highway Traffic Act. Through a procedure with the ministry, you can pass that over to your municipal bylaw office to enact that. I forget the procedure we went through in our community to do that, but it was available. He or she did the winter parking, did the illegal parking and things like that, which really came under the Traffic Act, especially on the highway going through the community.

Mr Hutton: I think we'd have to get you an answer for that, because in my 24 years of experience as an OPP officer, we don't enforce bylaws. I don't know the answer to your question.

Mr Jordan: It's the reverse. It's a bylaw enforcement officer enforcing you—

Mr Hutton: I don't know if he can enforce the Highway Traffic Act.

Mr Jordan: He needs a special order, I think.

Mr Hutton: I don't think he can.

Ms Fantopolous: I don't know if you would want to put a clause in the legislation to allow municipalities to enact a bylaw. That may be an option you may wish to consider in this regard, allowing the municipal bylaw people to issue a ticket.

Mr Jordan: I think it would put the responsibility where it should be, closer to the problem, rather than making it another responsibility of the provincial police, who are overworked and understaffed at present.

1700

Mr Hutton: Or municipal police. I don't know how many person-years they put to education in the schools or those types of enforcement programs on the bike paths or anywhere else.

Mr Waters: If I hear what you're saying correctly, Mr Jordan, you're saying if we pass a law, leave it up to municipalities.

Mr Jordan: Well, outside the highway traffic area. First of all, it's illegal to be on a four-lane highway with bicycles, is it not?

Mr Hutton: Controlled-access highways.

Mr Jordan: Yes. There are a lot of controlled-access highways that are just straight two-lane highways, and they're posted, "No bicycles allowed."

Mr Waters: Would that not make it very difficult for, let's say, someone who was vacationing in the province? If they go into one municipality, they'd have to wear a helmet; in the next one they wouldn't. There would be no standardization. It would be an unbelievable mess, wouldn't it?

Mr Jordan: No. I would leave it provincial in law enforcement, like many other provincial laws we have, whether they're zoning or chief building officials' duties or whatever, but they can be carried out by the municipal officer. For instance, it used to be that a bylaw enforcement officer couldn't issue a ticket, a summons. Well, you can pass a resolution of council, send it to Toronto and have it approved, and it comes back giving that fellow the right to do that.

Mr Huget: The Green Hornets will do it.

Mr Jordan: Yes. He can issue me a summons actually, by giving me a ticket.

Mr Hutton: If it's an offence you committed in contravention of a bylaw of that municipality.

Mr Jordan: That could be the key to it. I see what you're saying. If they didn't pass a bylaw supporting the provincial bylaw, then they couldn't use their bylaw officer to enforce it. They'd have to have the police do it. There's got to be a cheaper way and a closer way to deal with it.

Mr Waters: That's what I'm saying. It would end up being a real hodgepodge, very confusing.

Mr Jordan: Enforcement here seems to be the big hurdle.

The Chair: I should ask you to note that research has asked me to ask Ms Fantopolous if Solicitor General's counsel could advise whether provincial offences officers would be capable of enforcing this legislation if it were part of the Highway Traffic Act, as compared to a mere municipal bylaw. Their capacity to do that might address Mr Jordan's concerns.

Mr Jordan: That's what seems to be coming out. The enforcement of it is the problem. Everybody is in favour of it. Everybody is in favour of the education. Everybody is concerned about how we're going to enforce this thing.

Mr Klopp: I think we should look at the idea that the local people do the education. It's quite interesting. If you can get a law that says it has to be in every area, and then each municipality somehow or other creates a committee or something, a bylaw, then you can maybe appoint your local Lions Club through your own municipality and it would do the work. It's an interesting concept. I think I'd like it looked at a little more closely.

The Chair: The point is well made. Anything else, Mr Jordan? Any other questions to put to either of these people who are here on behalf of the Ministry of the Solicitor General?

The committee now is going to consider the process and the issues as prepared by Ms Anderson in her paper, and in view of the fact the Solicitor General would have a significant interest in the process and the issues, I wonder if you two might stay with us for at least a short while, because Ms Cunningham and others may have questions of you once that has been done.

That having been said, do I understand, Ms Cunningham, you're moving that the committee approve—we'll do this in two parts. Everybody has a copy of the paper by Ms Anderson. Two parts: one is process, the second is issues. Are you moving that the first part of the paper, entitled "The Process," be adopted by the committee and incorporated into the committee's agenda?

Mrs Cunningham: Yes, I am.

The Chair: It's moved by Ms Cunningham. Do you want to comment on that?

Mrs Cunningham: I just think we're ready to deal with this. We've been listening to a lot. It isn't that this precludes any other submissions before the committee, but the question we're now getting asked is, "What next?" I think we've seen by today that there are no easy answers, but sooner or later somebody has to, if we decide, get on with drafting the regulations, and certainly we've been asked.

I guess Ms Fantopolous is the one who will be able to help us on this. I think it would be fair, since we've done so much work, to give some direction on what we want. That's the intent of this paper. We've looked at all of the issues that have been raised by the committee. We've put them into a format that we think begs a solution and some direction to yourself. But I think before we get into those issues we should talk about the process. We'll look for help as well from Ms Anderson on this, because this is the normal process if something would happen with regard to legislation by the government. But we've got a bit of a different tack here.

If you'll bear with me, I'm just going to read it and we can make decisions as we go along. Has everybody got a copy of this? If you haven't, there are lots up here. We can't deal with it without this.

"Since Bill 124 was introduced as a private member's bill, it has not gone through the same policy development process within the various ministries that would be carried out for a government bill."

I have to stop here and say that we thought the government had already had an interest—not this government but the government, some government—with regard to bicycle safety and the use of bicycle helmets, because throughout this process, which has gone on for almost a year now, we've been told about this other committee.

We're a little bit surprised that the committee hasn't sort of kept up with us. That's not a criticism. It is probably directly related to one's workload. So now we're saying, maybe the timing is even better, because there wouldn't have been as much wasted. We thought that was going on at the same time. We thought at the end that committee would come to us and say: "These are the issues we've identified. These are our concerns," and we would

say: "We agree with you. Let's add to it with this," and the whole thing would have come together. But, because of workload or whatever, that hasn't happened. We're in the position now of telling at least the Solicitor General's office what's happened.

"At the same time, there are a number of issues to be decided that are not incorporated in the current amendment contained in Bill 124."

Of course that's just one word: "bicycle."

"There is little experience to draw on for a committee wishing to develop further the policy contained in a private member's bill. As a consequence, we suggest the following steps:

"1. The committee should make decisions on those issues it wishes to be covered by the bill. It should decide both the policy direction of the issue and whether that policy should be expressed as an amendment to the legislation or a regulation. We have developed the following list of issues and suggested actions to help structure this discussion."

The issues are following. So that's a piece of information. Let's deal with it when we've done the whole thing and what you really want to do.

"2. As a result of its discussions, the committee should draft a report containing its decisions, to be submitted to all appropriate ministries for their review. The committee should recommend that an interministerial committee develop a single response, to be returned to the committee by a specified time, such as the fall."

I would not go for that. I think that it's too late. I think we can do it sooner, given all the work that's been done.

"This would allow the ministries' policy development process to be carried out. The committee might further request that the response contain the specific amendments to be considered in clause-by-clause.

"We suggest the ministries include..." I'm not going to read them because they've been read by the Chairman on a number of occasions, mainly to underline their absence. But I agree with the list. I'm not being particularly uptight about the fall except that the impetus is here now for this committee, and I think it is for the government as well.

"3. The committee would review the response by the ministries.

"4. Clause-by-clause, incorporating amendments to the bill."

My assumption is that the step between 3 and 4—and this is where you can help us, Anne—after, "The committee would review the responses by the ministries," wouldn't we have in there somewhere that the regulations would be drafted?

1710

Ms Anne Anderson: You can put suggested regulations in the initial report to the ministries in step 2.

Mrs Cunningham: I see.

Ms Anderson: The committee would not draft regulations.

Mrs Cunningham: Okay, but where do the regulations come in—between 3 and 4?

Ms Anderson: They don't. The regulations are drafted officially by the Lieutenant Governor in Council or by the minister who's specified in the legislation. The regulations are drafted quite often after the bill has gone through. The way of getting the information you want in the regulations to the ministries would be in some form of report—either the report in number 2 or in some other written document like that.

Mrs Cunningham: I see the main difference here. It's actually been one of my great frustrations as a member of this Legislative Assembly, certainly in opposition, but I think government members have felt the same thing: that we end up so often with a bill but there are no answers. Everything we've ever listened to in the committee, whether it be the Independent Health Facilities Act or some other things I sat on like some of the Sunday shopping stuff, although we've had direction we've never seen the end result of it.

Sometimes the regulations appear down the road somewhere and none of us who have been involved have seen them. We have a chance here to at least direct what ought to happen. As far as I'm concerned, that's the purpose of this committee. The bill itself is clear. The questions we have to answer probably can only appear in regulations; otherwise we're not giving any direction. It would be easy to pass the bill: bicycle, yes or no? That's the bill. Do you want helmets or don't you? But I think the purpose of this committee—and I think the superintendent should certainly feel somewhat relaxed—is to be more responsible than that and come forth with this report that would recommend the regulations.

Ms Anderson: Some of the items you might want to recommend could go in as amendments to the bill so that your bill would no longer be one word but could perhaps incorporate some other things—

Mrs Cunningham: And that comes under issue-by-issue?

Ms Anderson: Yes, it would be incorporated under clause-by-clause later on.

The Vice-Chair (Mr Daniel Waters): Could I ask a question here? The helmet at this point is under the Highway Traffic Act, right? And it would have to be changed, I believe? Maybe we—

Ms Anderson: Are you talking about the standard for the helmet, or the—

The Vice-Chair: Yes. The helmet as described in the Highway Traffic Act is indeed not anywhere near the helmet that we—

Mrs Cunningham: No, but it specifically relates—it's in the regs.

"5. The bill is reported back to the House and proceeds through normal channels."

At least from my point of view I would like the discussion to be around number 2 because I think the others are pretty self-explanatory. I think this is probably an appropriate time to talk about at least the ideas that have come before the committee with regard to an implementation date. The other legislation I think—not all of it but a lot of

it—has an implementation date usually in the spring, because that's when people are bringing their bicycles out and students are starting to think about riding again, certainly in Ontario.

I suppose it could be in the fall, but to my way of thinking it's spring. We're told by the consumer people that most bicycles are sold in the spring of the year and that most people acquire new bicycles, meaning second-hand new bicycles, in the spring of the year. My view was that if we were going to have an implementation date it would be the spring of 1993 or the spring of 1994, depending on what we came up with.

At that point, in my view, if we were to do something like that, I wouldn't be prepared to wait until the fall for this interministerial committee, which I thought was meeting all along, to respond to our report. Could the committee have some discussion around that point now, Mr Chairman? To my way of thinking, this process thing we could pass today. I don't like the fall, but that was just an idea anyway.

The Vice-Chair: Is there anyone who wishes to comment?

Mr Klopp: My definition of the fall or the way I'm understanding this—and correct me, Mrs Cunningham—is that we asked them to get back to us in the fall with the report so we can get on with it, so we can have a chance to get something done in 1993, if we're so lucky. Maybe if we put the date on there, if they come back September 25 with a report, not "fall," which leaves it too wide open.

Mrs Cunningham: I'd like to see the report to us in the spring.

Mr Klopp: This spring?

Mrs Cunningham: Yes. I'm talking about before the House rises at the end of June.

Mr Klopp: I call June summer. I'm sorry.

Mrs Cunningham: Yes.

Mr Klopp: It's the farmer in me, I guess. Spring was last week.

Mrs Cunningham: And then for us to respond to this. Please jump in here as well if you've got some assistance for us. This is the first time we've had to get down to something specific. My idea was to get something done this spring, so that we would know what these regulations and any amendments ought to look like, and then the bill could be introduced in the fall—that was the way I looked at it—with an implementation date probably for the following spring of either 1993 or 1994. I think we're on a roll right now and we're going to lose a lot if we don't look at something specific before the House rises.

I don't want to impose my opinion—I've tried not to do that—but on this one I—

Mr Klopp: Excuse me, but since you said June—to me spring was last week.

Mrs Cunningham: Okay.

Mr Klopp: I apologize. I don't mind asking them if they could have it back June 15 or something like that, have a date. If they can't, they'd better have a good reason why they can't. I can appreciate that we've studied this to death.

Mrs Cunningham: So perhaps, since we're in the second week of May, it could be the second week of June, something like that? I don't think it's going to be that difficult for them. Writing the legislation will, because we'll tell them what we think should happen.

The Vice-Chair: Ms Fantopolous, I believe you've indicated you have something to say.

Ms Fantopolous: Yes. I have a question just in terms of the report. Has it already been drafted by this committee? I understand from what you're saying that you're looking at about a month for all the ministries to respond. Is this report ready or will it be ready in two weeks?

Mrs Cunningham: It won't be ready until the end of May.

Ms Fantopolous: That gives us all less time to deal with it and I think it's important that we have enough time to look at all the issues, although you've said they've been looked at over and over again. I'm just wondering in terms of your readiness.

Mrs Cunningham: That's a good point. We may not get this written for another couple of weeks. It would be our goal to have it done so you could have some response to it by the summer. But you're right: It's going to take us a couple of weeks to do this.

Ms Fantopolous: Okay.

Mrs Cunningham: Shall we leave that point and just keep in the back of our minds that it might be a nice goal?

The Vice-Chair: Mr Brown has raised an interesting point. I personally don't have the answer, and that is, who would convene this interministerial committee?

Mrs Cunningham: Maybe Irene could answer that.

Ms Fantopolous: In terms of who would convene it, I'm not in a position to give an opinion. I would imagine it would have to go higher in terms of the deputy minister and he can decide who, or someone can be designated. I don't know how senior you want this committee to be, at what level. That has to be a decision that has to be made by this committee. At the same time, a letter or something should go out to our deputy minister or minister to have someone be responsible for each of these ministries.

I understand the Ministry of Transportation is taking the lead in terms of the bicycle policy review, so in terms of the lead ministry it would be Transportation. That might give you some sense of where to go with it.

Mr Huget: Could we ask that someone get back to this committee within the next week or two weeks in terms of developing the makeup of this committee and indicate to us that there is a committee in place? With its membership intact, that information should to come to this committee within the next week or two weeks at the outside. We should be able to ascertain whether or not this interministerial committee has been put together.

I don't think we can really control the speed at which the committee works, but we can certainly control the speed of the formation of the committee. I think we can ask quite legitimately that someone come back to this committee within 14 days with the makeup of that interministerial committee.

1720

Ms Fantopolous: Okay. Basically what you're asking is, who is involved in the bicycle policy review?

Mr Huget: Absolutely. There seems to be some confusion around that, and I agree with Mrs Cunningham—once or twice a year, and this is one of those times—that clearly momentum is needed in getting that committee working, because it plays a very critical role in terms of our deliberations here. Without some indication of who is on that committee, that it's been struck and is prepared to go to work, then you're quite right, momentum disappears. We should be able to expedite that, either with friendly persuasion or a lead pipe.

Ms Fantopolous: I can certainly find out in terms of who sits on that committee and get back to you in the next couple of weeks.

Mrs Ellen MacKinnon (Lambton): Could somebody explain to me why Citizenship, treasury board and Management Board are included in this list of ministries?

Ms Anderson: Citizenship was included because of some of the exemption questions, I think, to do with different religious reasons why people might be exempt, the Sikhs, for example.

Mrs MacKinnon: I'm sorry, I can't hear you.

Ms Anderson: Citizenship was included because there had been some discussion that some of the exemptions might be for religious reasons. Sikhs, for example, might request an exemption. There was some thought that maybe Citizenship might be involved in it for that point of view, and treasury board because of any funding or expenditure implications.

Mrs MacKinnon: Does Management Board have the same responsibility, funding?

Ms Anderson: I'm not sure. There are control functions built into Management Board as well for the funding.

Mr Sutherland: Management Board looks at it from a policy standpoint; treasury board actually allocates the dollars.

The Vice-Chair: Any other discussion?

Mrs Cunningham: Only to add that certainly the Ministry of Transportation has taken the lead from the beginning, and it's my view that we probably have to send an official letter from the committee to each of the ministers saying that this committee will in fact be struck and that we need a representative.

At the same time, we should be asking the Minister of Transportation if he will officially take the lead. He has taken it so far, and I think he will. Certainly his representative, David Edgar, has been here all along and would probably be best qualified, in my view, to guide the process. It's the legal people we're going to need, and perhaps within the committee itself it would then be that they would decide that the Solicitor General would draft the regulations, I don't know. I think that's a decision to be made by the experts on the committee. Could you respond to what I just said?

Ms Fantopolous: In terms of the administration of the Highway Traffic Act, it is the Ministry of Transportation

that administers it, although there are enforcement issues that belong to the Solicitor General. In terms of protocol, it would be Transportation that would be administering and drafting up the legislation. I may be wrong on that count, but I do think it's their responsibility.

Mrs Cunningham: Mr Edgar is here. Would you agree, David, that—

The Vice-Chair: Excuse me, David. Could you go to a mike.

Mr David Edgar: Yes. Since it is an amendment to the Highway Traffic Act, it's the responsibility of Transportation, I think, to take the lead on it. What I might recommend is that the committee draft a letter to Transportation to ask that the committee be struck and report back to this committee at a time when the committee is ready to make proposed recommendations on the issues.

Mrs Cunningham: I think the good news out of today would be that the committee could be in place very quickly. If we get started on that today, at least we've accomplished that first step, plus the lead for the drafting of the regulations.

The Vice-Chair: I'm going to interject here because I've been having some discussion with the clerk, and there is a concern as to whether indeed we can ask that a committee be struck or whether we can demand that a committee be struck. We will have to wait until Wednesday to get that answer. In here we're saying that the suggested ministries include, but we don't know for sure whether we can indeed, on a private member's bill, demand that a committee be struck including all of these ministries. The clerk has assured me he will get that answer for us by Wednesday and will give us that answer.

Mrs Cunningham: My view is that we send a letter immediately to the Minister of Transportation telling him what we want to do and asking him to take the lead on this, asking him to be responsible for drafting the regulations and that as part of his responsibility, because it has been the practice that the ministries he requests to be part of this implementation process are—and put them down. Then it's up to him whether he wants them all or not. So rather than asking—

The Vice-Chair: Are you making this as a motion?

Mrs Cunningham: Yes, that is a motion.

The Vice-Chair: Any discussion on Mrs Cunningham's motion?

Mr Huget: Sorry, I didn't hear the motion.

Mrs Cunningham: Two things. I said that we send a letter to the Minister of Transportation asking him to take the lead on this, asking him to be responsible for the drafting of the regulations and asking him to strike a committee, the membership of which may—he can decide whether he wants it to not, as it's his responsibility, not ours—include, and the following thing.

I just think that's the way it should go. We have to show some initiative here if we want to get it done. We know what happens in committees and meetings and all this stuff, and if we don't give—

Mr Sutherland: Right.

Mrs Cunningham: Right, Kimble? We've learned something, haven't we? Is there anyone who would object to that?

The Chair: Are we calling the question?

Mr Huget: Yes.

Mr Klopp: Do we have to have a quorum?

The Chair: We have a quorum. Can I get the opposition's point of view? Oh, I'm sorry. They're not here.

Mrs Cunningham: You're asking for that?

The Chair: They're here and ably represented in Mrs Cunningham.

Mrs Cunningham: We don't have an opposition today, remember?

Okay, that takes care of the process then.

The Chair: So there is consensus on this?

Mr Klopp: Consensus.

Mrs Cunningham: How's everybody doing with regard to how you want to spend the rest of today? That's up to you, Mr Chairman. When is our next meeting? Do you want to go through these issues today?

The Chair: Our next meeting is on Wednesday at 3:30. We have scheduled to appear here at 3:30 a representative of the Ministry of Tourism and Recreation. I don't anticipate that they'll use up a great deal of the time. That means there will be time on Wednesday afternoon to discuss the agenda as we go down the road and perhaps as a matter of issues as proposed in this paper.

Mr Huget: Just on a point of order, Mr Chair: You mentioned Wednesday's meeting at 3:30. As you probably know, no one from at least one of the parties showed up here until 3:52. People are being kept waiting. Witnesses are being kept waiting. I think that is tremendously unfair, and I would ask the Chair if he could perhaps send a little reminder by means of a note of the importance of attending and starting these hearings at 3:30. I find in the last few weeks it's beginning steadily later and later and later past the time.

The Chair: People can obviously be late for any number of reasons, some of them better than others. However, any of the caucuses can indicate that they want the matter to proceed, notwithstanding their absence.

Mrs Cunningham: Let's do that.

The Chair: Unfortunately, they didn't do that today. As a matter of fact, is it the committee's wish that we commence at no later than 3:35 and that any caucuses that aren't represented be deemed to be present?

Mr Huget: I would move that, Mr Chair.

Mrs Cunningham: Yes, we can do that.

The Chair: Okay. There is a consensus in that regard. Thank you. What the clerk might do is advise the caucuses that this is how it's going to take place, especially on Wednesday, because we do have personnel here. It's different when we're here without members of the public. Point well made.

With respect to issues, let me first determine for Mrs Cunningham—

Mr Sutherland: Just before that, do we still need our guests here?

1730

The Chair: Ms Cunningham is going to indicate to me very shortly, once we deal with this issues part. With respect to issues, again not wanting to preclude any discussion about the proposed issues, I want to know, for everybody's benefit, is there consensus at this point with respect to those as a list of issues, perhaps not exhaustive, but certainly a working list of issues for the committee to consider?

Mr Klopp: These are good.

The Chair: Is there consensus in that regard?

Mrs Cunningham: That's good.

The Chair: Ms Cunningham, do you have any more need of the superintendent or of the staff person, Ms Fantopolous, from the Solicitor General?

Mrs Cunningham: I think they could probably help me answer the question on that. We haven't had a discussion with regard to exemptions. We haven't had a discussion with regard to where. We have had discussion today with regards to the penalty and the enforcement. I think it might be appropriate, Mr Chairman, if we do have some representative from the ministry. Perhaps Mr Edgar could help us on this one as well. Do we have enough information now to make these decisions, at least in a preliminary way, and send them to the committee?

The Chair: Mr Edgar, come on up to a microphone, please.

Mrs Cunningham: Is there anywhere where we should be asking for representation from one of the ministries? Perhaps Superintendent Hutton would help us on this. He's got the paper in front of us. Is there something there he hasn't told us today that he feels he can be helpful with? The only one we haven't really talked about, Superintendent Hutton, is the "where." I'm not sure what you would say there.

Mr Hutton: You'd be restricted to the definition of "road" or "highway" in the Highway Traffic Act, if you brought it in through the Highway Traffic Act.

Mrs Cunningham: I think the second sentence there is interesting, "It would be complicated to change the act to incorporate these, and may not be necessary since most cyclists will have to use the highway to reach these areas," which means that we would leave the word "highways" in the act, not specify in the regulations "playgrounds" or "schoolyards" or "parks." That would be my interpretation of what we have before us. I wondered what advice you would give in that regard.

The Chair: If I can interject on behalf of research, perhaps once again Ms Fantopolous might ask Solicitor General counsel to speak to that, because it may be much broader than merely expanding the definition of "highway". It may be a major constitutional issue about what the province has the jurisdiction to control. Clearly the province has the jurisdiction to control conduct on roads,

highways, public thoroughfares. There might be some people, counsel, who would say that it's only the Criminal Code that can control conduct on other than highways, again because of respective jurisdictions. Maybe Ms Fantopolous could have counsel address that.

Ms Fantopolous: This question, as it pertains to the Highway Traffic Act, can be forwarded to the Ministry of Transportation. They may be better able to deal with that.

The Chair: I think the committee's concern is of course about the Highway Traffic Act. Does the province have the jurisdiction to legislate conduct of this type that is not on a road, highway, public thoroughfare?

Mr Hutton: Especially bicycle paths. I don't know how'd you cover that.

Mrs Cunningham: I agree.

The Chair: There are undoubtedly going to be some high-priced lawyers who could tell you what they think.

Mrs Cunningham: Could I ask you, Ms Fantopolous, if you would look at this issues paper, and if there is some information that you think we should have, either send it to us or be present at the committee on Wednesday?

Ms Fantopolous: Sure.

Mrs Cunningham: We're pretty humble about asking people. Although the point was made about people being late—we don't want people coming to waste their time—we are always seeking the best advice. I suppose the same could be said to the superintendent. If you feel you could be useful or helpful with us as we go through this on Wednesday, certainly we'd welcome your good advice.

Mr Hutton: I just wish Bob Scott could be here because he's been on that committee for the last two years, but if there are questions I can't answer, I'd certainly make him available some time to you.

Mrs Cunningham: That's good; that's very helpful.

The Chair: Superintendent Hutton and Ms Fantopolous, thank you very much on behalf of the committee for your time and your input; we appreciate it. It's been an interesting exchange, among other things.

Mr Hutton: It's been interesting for us too; for me anyway.

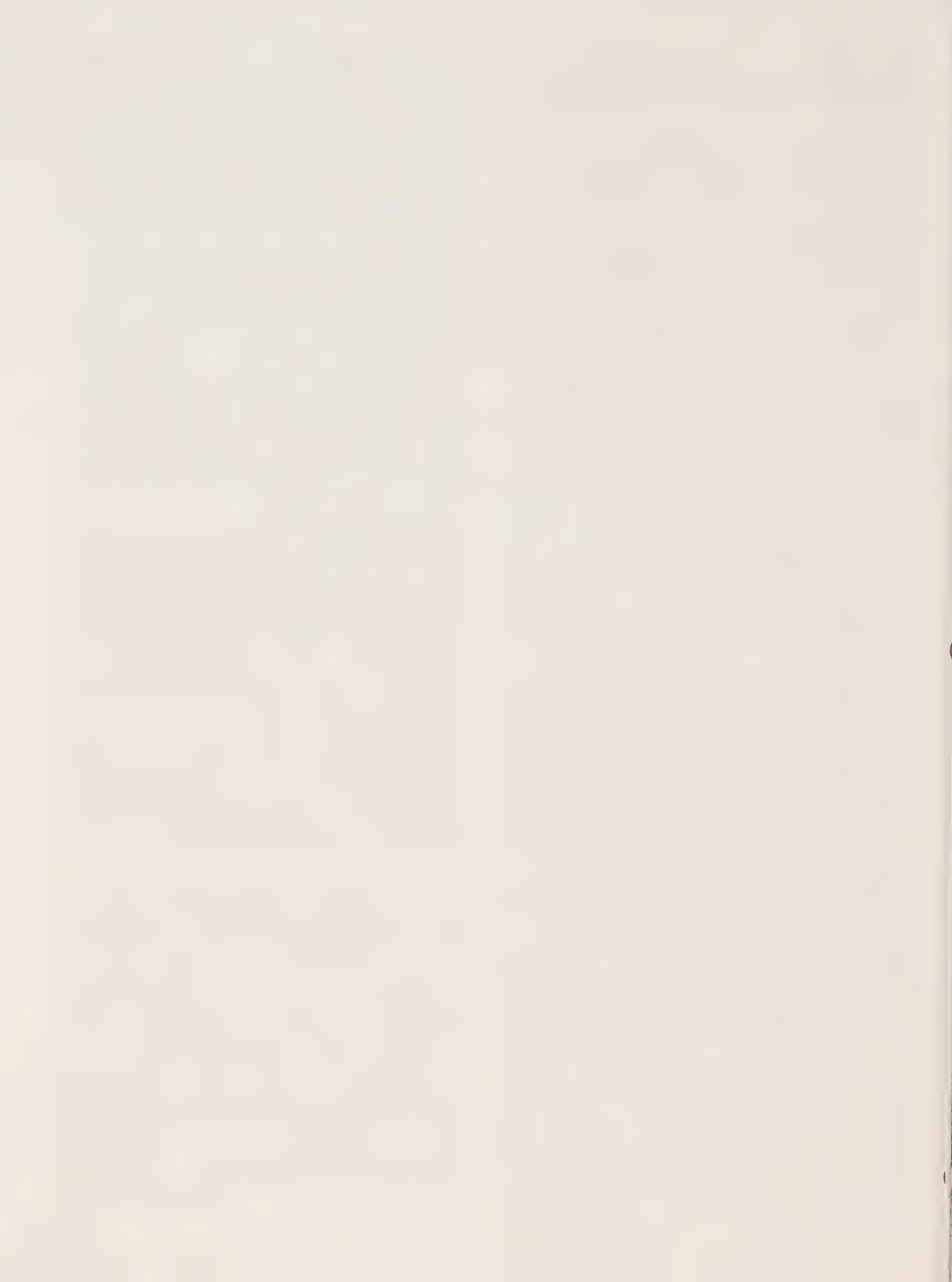
Mrs Cunningham: May I just add that it's been very candid on your behalf, and we really appreciate that. We weren't quite certain what you would be saying, and I think we've welcomed your candid responses and your commonsense approach. It's really been enlightening.

Mr Hutton: I hope the ministry has the same opinion of today. But we're the ones who have to educate them, so that's my opinion. Thank you for those comments.

The Chair: Thank you, people. Take care.

Are there any other matters before the committee? No other matters; that means we will adjourn till Wednesday at 3:30 pm, at which time the Ministry of Tourism and Recreation will be present, and as well other committee business may be addressed.

The committee adjourned at 1736.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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MacKinnon, Ellen (Lambton ND) for Mr Dadamo
Sutherland, Kimble (Oxford ND) for Mr Wood

* In attendance / Présents

Clerk / Greffier: Brown, Harold

Staff / Personnel: Anderson, Anne, research officer, Legislative Research Service



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Second session, 35th Parliament

Official Report of Debates (Hansard)

Wednesday 13 May 1992

Standing committee on resources development

Highway Traffic
Amendment Act, 1992

Assemblée législative de l'Ontario

Deuxième session, 35^e législature

Journal des débats (Hansard)

Mercredi 13 mai 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant
le Code de la route



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 13 May 1992

The committee met at 1540 in committee room 1.

HIGHWAY TRAFFIC AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT LE CODE DE LA ROUTE

Resuming consideration of Bill 124, An Act to amend the Highway Traffic Act / Loi portant modification du Code de la route.

MINISTRY OF TOURISM AND RECREATION

The Chair (Mr Peter Kormos): Good afternoon. We have with us this afternoon from the Ministry of Tourism and Recreation, Mr Uwe Sehmrau joining us once again, and we appreciate his taking the time. We also have Superintendent Hutton from the Ontario Provincial Police, on behalf of the Ministry of the Solicitor General, and Michael Weir, policy adviser to the Ministry of Transportation.

Mr Sehmrau, if there is something you want to open with, please go ahead. Then we will move to Mrs Cunningham—she's the author of the bill—and other members of the committee for questions, dialogue, what have you.

Mr Uwe Sehmrau: Open with respect to making my remarks?

The Chair: Yes.

Mr Sehmrau: I have made copies for everyone here, and perhaps you could follow my remarks. It might make it somewhat easier.

I'm pleased to have the opportunity to address this committee on the important issue of bicycle safety. The Ministry of Tourism and Recreation has an extensive record of promoting and supporting safety in all sports and fitness and recreational activities, including cycling.

As the prevention of head and spinal injuries is a top priority for all of its safety initiatives, the ministry supports the intent of Bill 124. The appropriate legislation, in combination with effective educational programs, is undoubtedly the best way to achieve the goal of significantly reducing deaths and injuries resulting from bicycle collisions. It is, however, the opinion that the legislation must be appropriate to all aspects of safety in cycling, not merely compulsory use of helmets, in order to have the desired impact.

I'm sure that others have appeared before the committee to adequately address the aspects of traffic safety and law enforcement on the public roadways. Although we are equally concerned with all aspects of cycling on roadways and trails, I will limit my remarks to issues of this bill as they affect tourism and recreation interests. For the Ministry of Tourism and Recreation, the issues related to this bill do not pertain to the intent but rather to its limitations.

First, the bill has as its prime focus the minimizing of injury as a result of collisions. This approach would indicate that the concern is to make accidents more sustainable as opposed to reducing or preventing mishaps. There is

currently no provincial legislation which requires either riders to have training or the province or municipalities to meet certain standards to provide for a safe bicycle infrastructure for this activity. To introduce legislation which deals only with the aspect of safety in collisions and does not deal with accident prevention or safe cycling opportunities is at best incomplete.

Second, using the amendment of the Highway Traffic Act creates considerable shortcomings for recreational cycling which does not take place on public roadways. Using the existing legislation would not make it compulsory to wear a helmet on bicycle trails or off trails while using the very popular all-terrain mountain bikes. This exclusion presents a variety of problems.

This loophole may shift riders from roads to recreational trails, creating demand for recreational trails and increasing the risk of injury on trails since the rules of the road could not apply there.

It creates confusion for riders who use both roads and trail systems. In many instances, trail systems use short portions of roadways to link their routes. Two almost opposite standards would apply to riding bicycles.

Recreational cycling can be a very effective educational process to achieve compliance to requirements for wearing helmets. The proposed legislation has the appearance that cycling off the public roadway is sufficiently safe without wearing a helmet, denying us the opportunity to instil safe riding practices at the entry level for the activity.

More and more cycling facilities are being developed which are not part of the roadway. The development of urban linear parks, river valley systems and lakeshore trails and the conversion of abandoned railway corridors to recreational trails all contribute to more opportunities to cycle off the public roadway. Bill 124 will not be effective in ensuring protection for riders on recreational trails or other off-road areas.

As human-powered forms of transportation become more popular in our attempts to be more environmentally conscious, other modes of moving about which require rules for safe conduct are surfacing. Rollerblading and skateboarding, according to some, have the potential for being as popular as cycling. People on rollerblades and skateboards are exposed to the same risks, or potentially even greater risks, as are cyclists, yet the proposed legislation would not apply to them.

Third, the legislation also raises some concerns about potential negative effects on tourism and recreational activities.

Many travelling vacationers from out of the province bring an array of equipment, such as boats and bicycles, with them to use locally. It could serve as a deterrent for people to come to Ontario if the bicycle helmet law is rigorously enforced immediately.

Recreational cycling is seen as a very accessible form of low-cost physical activity for the whole family. In some cases it is not only an affordable recreational activity but also the only mode of transportation. The additional cost burden to outfit a family on welfare with bicycle helmets could easily influence such a family to give up cycling. This would definitely not serve the social equity goals of this ministry and the government.

In summary, the Ministry of Tourism and Recreation supports the intent of the bill. However, we believe that more appropriate legislation should be developed to serve this intent. Provincial legislation should encompass accident prevention as well as user protection, apply to safety concerns in all forms of venues of human-powered activities, include plans for major education campaigns and be sensitive to the socioeconomic conditions of certain populations. I am certain this ministry would be pleased to participate in the development of effective legislation for this province to serve this intent.

Mrs Dianne Cunningham (London North): Thank you very much for coming before the committee to help us out with this. I'm not surprised that some of the issues you've raised for our consideration have come from your ministry, and that's a good thing, because we just haven't had a great deal of debate on them. We know that on a number of occasions the Chairman has asked that different ministries come forth. It's called prevention. If you want to deal with it, this is the best place to deal with it, because it appears that this is the way this bill is being developed by the members of this committee. So thank you.

Could I just ask if it would be appropriate for me to go through with my obvious questions, and if anybody wants to jump in, jump in. I'm going to start on page 2, and if I don't cover it, will you just jump in? All of us are part of this.

With regard to your very first paragraph after your introduction, "the opinion that the legislation must be appropriate to all aspects of safety in cycling, not merely compulsory use of helmets, in order to have the desired impact," we have addressed that. It is the unanimous consent of the committee that we are looking at an implementation time frame of perhaps a year or two. We haven't decided, but we will be talking about that later on today. We're going to have to come to some conclusions, we think, today. But you're absolutely right. We think public education is extremely important. It will be a very important part of the implementation of the legislation.

We heard yesterday the same kinds of good advice from Superintendent Hutton, who is here today, and we've heard it from many people who have come before the committee. It would probably be the most important information we've had and in fact it has had significant effect on myself, because I've just decided, along with my colleagues, that we have to slow this thing down a little bit. So I wanted to reassure you on that point.

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On page 3 of your brief, you say, "This loophole may shift riders from roads to recreational trails." That's an interesting point. Just before coming here today I had a

little visit with two of the pages who are leaving. One of them was very concerned about this legislation. We're not surprised to hear this, because in Ontario helmets aren't cool yet, so we're not surprised that a 13-year-old should tell us he doesn't want to put a helmet on. But he said, "Even if I get a helmet, can I ride on my own country road and my own private property without a helmet?" Does this bring back your concerns yesterday? I am looking at Superintendent Hutton.

I'm wondering if you have some good advice for us in this regard, and if anybody else perhaps from the Ministry of Transportation would like to join us at the mikes. We have not had serious discussion on whether or not we change the definition of "highway" under the act for the purpose of bicycles, and that's what we would have to do. Since we're the politicians and you people are the high-priced advisers, why don't you tell us what you'd do if you were in our shoes. Anybody.

Mr Sehmrau: I think that's the essence of our concern. Our ministry has always been interested in making all recreational activities safe. We would be concerned that, particularly mountain biking, which would be taking place anywhere—it doesn't even require trails in some cases—would be seen as something that wouldn't require helmets and that activity in fact probably requires it more than on some of the paved recreational trails.

I'm not too familiar with what it would take to redefine a "highway." I think that's a fairly complicated process, particularly as it pertains to enforcement of rules once you've redefined it. I'm not quite sure whether the police would be interested in supervising all the trails and river valleys of Ontario. I think that's the source of our concern, that we want to make sure everybody wears them, and confining it to the Highway Traffic Act may not be the right way to do it.

The Vice-Chair (Mr Daniel Waters): Can I take a bit of licence here, if I talk to Mr Sehmrau on it, because we both work on another project, which is snowmobiling safety. Would there be a way of dealing with this as we do, because you're not allowed to drive a snowmobile, whether you're on your property or on the road or on crown land, you must wear a helmet, you must follow certain rules. Is there any way of doing that with bicycles?

Mr Sehmrau: I believe that's covered under a separate act. It's not under the Motorized Snow Vehicles Act.

The Vice-Chair: Yes, there's a separate act.

Mr Sehmrau: I think that's probably what would be required to incorporate recreational cycling on trails and off trails. We've had very good success in using all kinds of approaches to make people wear protective equipment. You might remember—some of you may not—10, 15, 20 years ago nobody was wearing helmets when they played hockey. I think first of all you don't see anybody in amateur hockey not wearing them any more. There are just a couple, two or three, in professional hockey who don't wear them. There was no legislation or threat of committing an offence used to make that happen.

Ms Sharon Murdock (Sudbury): The amateur hockey association has designated that if you want to play in its organization, you must wear a helmet.

Mr Sehmrau: Yes, but it's not an offence not to wear one.

Ms Murdock: No, not legally speaking; that's true.

Mr Sehmrau: It was used through educational and other incentive approaches. I think there is evidence of success of doing it that way.

The Vice-Chair: Ms Murdock, did you have a question besides?

Ms Murdock: I have a comment. I know it's all well and good, it's sort of like affirmative action and seatbelts. No one does it voluntarily until legislation is put in place. It's the same with motorcycle helmets; until it was legislated it didn't happen.

In truth, the sanction for amateur sports in terms of the hockey helmet is the fact that you can't play if you don't wear one. Albeit there was no legal sanction, there certainly was the sanction of your not being able to participate.

My view—rather than a question, and maybe you can comment on my comment—is that, first, it is going to have to be legislated to get kids to wear them and, second, with a fairly lengthy educational intro to the whole matter, we could get people to find it exciting and “cool” to wear them at these ages. Once you get into the habit of doing that, you're not about to be driving on a public road or highway under the act and then take it off when you hit the bicycle trail in the park. Human nature being what it is, I don't believe you would do that, but it's interesting. We have discussed among ourselves the whole aspect of what you do for the definition of parkways and recreational roadways and whether that could even be done under the Highway Traffic Act. I don't know whether it could or whether it would require a separate piece of legislation or an amendment to an existing one in another ministry. I don't really know what exists in regard to that. Is there any legislation in your ministry regarding recreational roadways?

Mr Sehmrau: No, because trails are under a variety of different jurisdictions. Some of them are provincially owned and managed, some of them are provincially owned and locally managed, some of them are locally owned and some of them are private property with easements. If you look at the Bruce Trail, it has 450 user agreements to make that trail happen and there really isn't a piece of legislation.

Ms Murdock: So it would have to be done provincially under an existing act, such as the Highway Traffic Act.

Mr Sehmrau: Or a separate piece of legislation.

Mrs Cunningham: I don't get paid to do this, but I'm going to do it anyway. Is everybody ready? You have to put your thinking hats on. The definition of a highway under the Highway Traffic Act: You're going to be so pleased with this. Everybody relax.

“‘Highway’ includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used

by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.”

The key there I think is “vehicle.” What are vehicles? Is everybody ready?

“‘Vehicle’ includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle...” What do you think?

Mr Sehmrau: I think the other operative words there are “property lines.”

Mrs Cunningham: Yes, which doesn't cover private property.

Mr Sehmrau: It might not cover certain properties that are not of a certain standard. I'm not sure whether a highway needs to be a chain at least. I don't know whether the province or a municipality would assume something is a public highway if it isn't meeting certain standards.

Mrs Cunningham: On this issue then, you've provided us with an option. We're going to need some advice. So we can refer this to the Ministry of Transportation legislative counsel, unless Mike would like to come up and give us the answer now.

1600

Mr Michael Weir: I think this particular issue was addressed last session, but the committee would be best served by obtaining a legal opinion on exactly what constitutes a highway so that this issue can be resolved. As Uwe suggests, although the definition as it reads certainly does sound quite comprehensive, there may be areas the Ministry of Transportation does not intend to extend its jurisdiction on. It's my belief, from experience dealing with the Highway Traffic Act, that those are areas like parks, school grounds and places where mountain bikes might go. But again, I would recommend that we seek a legal opinion on this.

Mrs Cunningham: Thank you. Will you make that motion, please, Sharon?

Ms Murdock: I would definitely like to make the motion.

The Vice-Chair (Mr Daniel Waters): Ms Murdock moves that legal advice be sought in relation to the definition as it is defined in the Highway Traffic Act in regard to highways.

Discussion on the motion, please. No further discussion? All those in favour of Ms Murdock's motion? Opposed, if any? It's carried unanimously.

Motion agreed to.

Ms Murdock: Just on that point, not on the discussion but on the motion: When I prosecuted the HTA in provincial offences court, accidents could occur in parking lots of malls, and there was no jurisdiction, depending on where in the parking lot it occurred. You see kids riding bicycles in mall parking lots. That would not be covered under this. As I hear the definition as you read it, that definitely is private property.

The Vice-Chair: As a quick interjection from the Chair again—one of these days I'll find a way of doing this legally—my concern is that in my area we have a number of fire access roads that belong to the Ministry of

Natural Resources or the crown. They're not intended as a thoroughfare, but they're well travelled by mountain bikes, as they are in winter by recreation vehicles. I don't know whether even the definition in the book would cover that, so we should find out.

Ms Murdock: It says "roadway or passageway for vehicles." A bicycle is a vehicle, albeit not motorized—or some of them are not motorized.

Mrs Cunningham: We'll wait. The point of the motion, I think, is to get a legal opinion. Sooner or later somebody has to sit down and tell us the best way to go. What I've learned from the presentation today is that we either stay with the amendment to the Highway Traffic Act or we move into—which I had never considered before—a separate piece of legislation. We can accomplish it in one way or the other. I think the Ministry of Transportation will probably advise us in that regard. I would hope they would. I don't want them to sit on the fence on that. Our preference is to keep it simple.

Mr Len Wood (Cochrane North): I think what we've heard today, Dianne, is that your intention is to protect everybody on bicycles, whether they are small or adults, not only on the highway but on every property, private property or parks or whatever. I go for a legal opinion on that to see what the advice is. It's probably going to cover most of the population of Ontario.

Ms Murdock: This is just sort of in-house conversation; I apologize. If we start looking at the whole thing of an individual piece of legislation, first of all, this must follow the rules of the road as stated under the Highway Traffic Act. That's one of the reasons bicycles are under the HTA in the first place. But when we started this, I don't think any of us had any idea of it being far-reaching into skateboards, rollerblades and God knows what else our kids will come up with over the next few years.

Maybe MOT could look at that in terms of whether those areas could be done on an individual basis—combined under an individual piece of legislation—although I'll have to think about how I feel about doing this in an individual piece of legislation.

Mrs Cunningham: To my way of thinking, in order to address the issue we should do it in whichever way is appropriate. My hope is that we can stay with what we've got here.

Would you include in your motion that this referral also be to the Solicitor General? It appears to me that we can only go so far as legislators, and although it's the intent to cover people riding bicycles, the other part of our responsibility is what we do with people who break the law. Perhaps in this regard the Solicitor General should also be giving us an opinion on this with regard to the implementation of any penalties. So would you include the Solicitor General as part of your motion? I would be interested to see what they had to say about people who are riding in school yards and what not. As far as I'm concerned, they're simply not subject to any fines.

The Vice-Chair: Before we go through all the rigmarole of making an amendment, can we just have a friendly inclusion, with unanimous consent?

Ms Murdock: Okay.

The Vice-Chair: Okay. Thank you.

Mrs Cunningham: It was just something that was brought to my attention by the researcher. I think it's a very big issue, Mr Chairman, and it's one that we thank the Ministry of Tourism and Recreation for, because after all, that's probably a tremendous concern for it.

The Vice-Chair: Maybe what we should do is indeed ask if he feels there is a form of legislation that is more appropriate.

Mr Sehmrau: I'm not sure whether it can be done under the current proposal, but when I read through the proposed bill, certainly its only real merit to me was that it was potentially enforceable right away in that it would be done through an offence, and you could require people to wear them on the highway. That in itself is kind of a drawback because it wouldn't include the recreational component.

So for us it would make more sense if either in the revision of this proposed bill or in the new legislation it included disincentives other than just being an offence, that it actually included voluntary incentives, and that it would be more comprehensive to include other things like rollerblading and off-road use, and definitely included a heavy educational component.

I guess the legislation we would like to see, whether through amendment of this proposed bill or a newly introduced one, is a very heavy component of educational incentives. But I believe, now that I've heard you mention that, you've already addressed that.

Mrs Cunningham: It is the intent of the committee that that be a significant priority. That is one of the reasons we're considering proclamation more than a year from now.

I would like to talk a little about the enforcement. On page 5 of your presentation, point (a) with regard to vacationers, certainly there are American states we travel into where we'd have to obey their laws, but I still think this is an important concern you've brought to our attention. It has been raised before.

I was interested to note that when you read it you said "is rigorously enforced immediately." You added the word "immediately," and it's not our intent to do this immediately. I think there'll be lots of time both for education and for the Ministry of Tourism and Recreation to have time to advertise this law as well as other laws that may affect potential tourists.

1610

It's not our intent to deter people. It would be our intent to deter people from ending up in our hospitals with serious head injuries that we may have to pay for. Certainly we don't want people to leave Ontario in any other way than that in which they arrived, and we are interested in our safe roads and what not. That would certainly be one of the good things we think we offer in Ontario, that we do have laws that are intended to help people protect themselves.

But I think the road safety aspect we were encouraged yesterday to talk about with Superintendent Hutton, who really underlined it times 10, is something we'd like to put

our emphasis into. Obviously we need a lot of resources and money to advertise road safety and bicycle safety, and maybe we could do Ontario at the same time.

Mr Sehmrau: Yes. I think our concern was primarily around the immediate enforcement of it. There would be certain confusion created: You can ride your bike in Arrowhead Provincial Park, but as soon as you go out down the street to get a bottle of pop, you're going to get fined. So when do you have to wear it and when don't you? I think it requires some awareness before it's enforced. It's a little different from flotation safety devices, because most bordering states require them as well. There aren't any bordering states right now that require bicycle helmets, so people wouldn't be prepared unless they were told about it in advance.

Ms Murdock: Boy, I'm not nearly as friendly; I realize Tourism and Recreation has a different perspective. I have brothers living in Windsor, and when you drive across the border or when you're coming back, or as you're driving off the bridge area to come back to the inner part of Ontario, there are big signs there that very clearly state that while in Ontario you must use seatbelts. When you're driving your car down to Florida, you're not allowed under its law to have coloured windows, and they don't think twice about sticking you with a ticket when you happen to be driving down there and get caught with that.

I think part of the tourism responsibility would be to have that information available in all our ministry outlets or whatever—again in the lead-in time we would allow for education—and providing that information to the people who come to Ontario to join us. If you use your boat here, you're required to follow the rules we have devised even if they're different from where you're from. I'm not being nearly as understanding, obviously; they need to be aware of the laws that exist for bicycles or anything else. That's just an observation I wanted to make.

As Dianne has stated already, there would be a period of time before proclamation, so it wouldn't become enforceable until that time and it would give us a lot of lead-in time for schools and public awareness programs.

The other thing I think is important that we've talked about at great length here is the fact that so many ministries are involved in this that the funding—because that's a major problem, as we all know only too well—would come from several ministries rather than always coming from one, because there are so many that have vested interests in this, Health in particular.

Mrs Cunningham: Two issues on page 5 under that same paragraph with regard to the enforcement: I know your concern was basically "immediately," and I hope we've made you feel more comfortable with regard to that. The other two are responsible, sensible ways of enforcing this. We will, later on in the committee, be looking at that under the issues and what kind of direction we'd like to give the ministry in that regard. We've had all kinds of good suggestions. In some states they say you can't ride your bike until you get a helmet. In other states they say, "Your parents are going to have a fine of \$25, but come down to the police station within 48 hours with your hel-

met and the fine will be dropped." We're looking at something that's realistic and practical, and we really don't want this to be anything but a responsible piece of legislation. We're not looking for anything draconian in any way.

Mr Sehmrau: We would like to make sure that people have time to learn about it and, second, when they do come to Ontario, they know where they have to—so they aren't faced with: "I can ride it on this trail, but I'm going to have to buy a helmet to wear when I go from Magnetawan to this little historic site." It needs to be very clear and some advance time given to people to understand.

Mrs Cunningham: It's an excellent point.

Mr Sehmrau: In this economy, we don't want to turn tourists away or give them a bad experience.

Mrs Cunningham: That's right.

With regard to your point (b), where we're talking about accessibility and cost and families, we're looking at that as well; it's a point that has been raised. I guess what most of us object to now is people who are still saying it costs \$100 to buy a bicycle helmet, when we know that helmets are now between \$25 and \$30. We've got one pamphlet here you might want to take with you. From the medical profession, the Kiwanis clubs, home and school associations, an individual distributor of Quebec-made helmets—we'd like to see Ontario-made helmets—and in physicians' offices almost anywhere you can pick up a pamphlet and get a very good helmet for \$25 or \$30 with all three levels of approval. The CSA is our main one, but we'd like to see them all. If you go into a store, we know that's not true, and we're worried about that, we're concerned about it.

Mr Sehmrau: The concern also was that it might be \$120 to get a cheap bicycle and another \$30 to get a helmet, when it only costs \$70 to get rollerblades. So people are going to get rollerblades instead of bicycles and helmets, and we're going to get people riding rollerblades and not being required to wear helmets. That's why we'd like to make it more comprehensive.

Mrs Cunningham: With regard to rollerblades and skateboards, I might add, our office has had a number of calls and we have been made aware of major accidents. Just last evening, while walking back from an engagement here in Toronto, we noticed a number of young adults out on these boards. We stopped and said, "Where's your helmet?" One of the fellows said, "It's on my back." You get to be disliked when you're associated with asking people to do things they don't want to do, I'm finding out. So far, so good.

Thank you for point 5. We do have to deal with the issue of people who can't afford them. We know that and we intend to do that.

Ms Murdock: Just on that point, one of the suggestions that has been made is that helmets be part of the bicycle when it's sold, at the point of sale. I personally think it's not a bad idea that it becomes part of the equipment associated with a bicycle. That doesn't cover your aspect of rollerblades and skateboards, although I guess it could on the skateboards. Most skateboarders, if you're doing it in any area other than on the streets of the city,

usually have elbow guards and knee guards and headgear anyway. I think it's probably a good idea that it become part and parcel of the sale of the bicycle. People's attitudes would change.

Mr Sehmrau: It's interesting that if you go to buy rollerblades, the retailer will not hesitate to try to sell you protective equipment, but if you buy a bicycle, you don't get the same spiel.

Ms Murdock: That's a good point.

Mr Sehmrau: I think there's a great deal of voluntary compliance with the new modes of moving about, but the bicycle has been around for over 100 years without using helmets and I think part of that history has to be washed out of the system. I think we'll probably have fewer problems with rollerblades, but people can switch from bicycles to rollerblades if they don't want to wear helmets, and we don't like to see that.

1620

Mrs Cunningham: You should know, Mr Sehmrau, that one of my staff persons, Andrea Strathdee, has been involved for a long time in this. One of the things we did want to be able to present to the committee as the issues arise is some good information. With regard to the issue of selling a helmet with a bike, we haven't completed all of our research, but I thought you might be interested in what a representative from Canadian Tire said, because that's a great distributor of both bicycles and helmets.

We were told that most bicycles are made in the United States or outside Canada, in Europe. The representative thinks that selling helmets with bicycles will be logistically impossible. We've got two other people to talk to, but I think this is interesting. Coordinating the package will be very difficult. Helmets would come from one manufacturer while bikes would be coming from a different area. They don't get shipments on time. Does it mean they can't sell the bikes till the helmets come in? These are the logistics of doing business in Ontario that we have to think about. Now, the next two people might tell us that's not a problem, but I just thought you'd be interested.

They're extremely supportive of the bill. They recommend that posters indicating that it's a law that helmets must be worn be visible in all stores that sell bicycles. Currently—this is interesting; I didn't know this—bikes have a red tag that says, "It is dangerous to ride a bicycle without a helmet." For those of us who haven't had reason to buy a bicycle—thank God, because I've bought so many in my lifetime and I don't want to buy any more. I didn't know that was the case, but it's interesting. Certainly we checked this out with a couple of parents, and they said that's so.

Mr Peter Kormos (Welland-Thorold): Interesting point: The matter of the sticker affixed obviously is a matter of liability for injuries and the nature of the tort system as it is alive and well in American jurisdictions. I appreciate that this isn't specifically within the realm of Tourism and Recreation, but it brings to mind again one of the many obvious and significant criticisms of no-fault insurance. We're talking about a regime where the guilty and the negligent are rewarded. It's sad, but a no-fault regime

would in itself encourage people not to use safety devices, because of course it's no-fault and people are paid out of a meat chart system and it would be insignificant whether you wore a helmet or didn't wear a helmet or whether you wore a seatbelt or didn't wear a seatbelt when it came to assessing damages.

Let's understand this very clearly: The bicyclist, who may not even be a licensed driver and could well be under driving age, who doesn't even undertake the risky exercise of operating a motor vehicle, submits himself or herself to one of the most regressive and cruel insurance regimes in the world when they take on the roadway. If they become victims of, let's say, a drunk motor vehicle driver, they, notwithstanding that they are bicyclists, are forced to accept what the no-fault meat chart would serve them and are disentitled to look to the negligent, drunk or careless driver.

With regard to the consideration, as you have, of preventive measures and education, I tell you, I think an important part of that is making sure that we restore innocent accident victims' rights so that liability becomes a factor in assessing damages. I think you would agree with that.

Mr Sehmrau: I think it's very interesting that you mention it. I'm not sure whose policy I'm going to be supporting here.

Ms Murdock: Peter Kormos's.

Mr Kormos: And the New Democratic Party's since Tommy Douglas in 1946.

Mr Sehmrau: Insurance disincentives are being used right now to actually meet compliance in the recreation and competitive sport areas. The insurance companies that insure the sports governing bodies will not cover people who don't wear helmets in cycling. That's why cycling can make the requirement. In the courier trade the couriers are all wearing helmets. They would not be allowed to use a bicycle because they wouldn't be covered under workers' compensation. So insurance disincentive has been an effective way to actually create compliance, almost voluntarily, because you lose a privilege to participate or a privilege to earn a living. I think it's something that should not be dismissed. I'm not sure who I'm supporting here, but it's a good way.

The Chair: I should thank Mr Waters for having taken the chair and fulfilled that responsibility. Now of course I'm back in the chair. Go ahead, Mr Waters.

Mr Daniel Waters (Muskoka-Georgian Bay): Mr Sehmrau, I'd like to know in some general ways what you think we could do at the present time, in the next year or two while we're waiting for the law, to increase the use of helmets. Do you think there's anything proactive? Do you have any ideas?

Mr Sehmrau: We definitely feel educational programs can be launched very quickly. I recently received a Hydro bill with an insert about bicycle helmets and safety and accidents. Those kinds of things can happen very quickly. I think you'll find a lot of people would participate in launching educational campaigns with respect to bicycle helmets.

I believe some of the areas of insurance disincentives could be looked at as well. I don't know how that works, but you might want to discuss this with somebody from the Ministry of Health in terms of whether people would be covered under OHIP if they didn't wear a helmet, or whether there was some kind of penalty. I'm not sure whether those things exist.

Mr Waters: As we've gone through this, I've thought about how we deal with younger children. It's a problem, because under the law they cannot be fined. What would happen if, instead of fining them, we rewarded them? Every week, let's say, we rewarded some kids in each community for wearing their helmets. They were found wearing their helmets and you had the kid of the week or the helmeted cyclist of the week award. Would that be of any—

Mr Sehmrau: Positive reinforcement is always better than negative reinforcement. It is actually becoming quite fashionable to wear the protective equipment of the day. I think that's why the rollerbladers are quite successful at this. It looks attractive to wear this stuff. You look a little bit like Darth Vader blazing down the street. We have some excellent heroes in cycling who wear helmets—Steve Bauer and his success. There could be a Steve Bauer award for somebody who deserved to get that award. I think there are ways to do that.

Mrs Cunningham: When we get into some of the issues these are the points we can direct to the ministry to see what may or may not be included in the regulations. I remember, when I first introduced the bill, one of the first pieces of advice on that issue I gave to the committee was an experience I had in Victoria, British Columbia, last summer where I said in jest—but it has proven to be even more correct this spring because I checked last week—that those young people who wore bicycle helmets and braces on their teeth were in vogue.

This spring the school board in Victoria, British Columbia, decided that students who do not have bicycle helmets will not bring their bikes on school property because they don't want head injuries on their property. They're not going to accept the liability for them and that's that. So it happens to be another insurance incentive.

Taking myself back, and dating myself, you could not take your bicycle to school in Toronto in the 1950s and 1960s unless you had a sticker on the back of your bicycle that proved your bicycle was safe. That was a lot of work. You had to take it down to your local police station. They came out and checked it over. If they didn't like it you went home till you got your sticker. Boy, you sure weren't in, in grade 8, if you didn't have a sticker on your bike, because everybody rode bikes.

After the presentation yesterday I think we have to seriously—I'm not sure we can move in that direction, given the work we're asking our police forces to do. Superintendent Hutton would probably have something to say about that. Feel free to come to the mike. It hasn't been a suggestion by any of us so far, but it may come up during the discussions. I guess we'll deal with that later on today, too.

Mr Chairman, I think we've gone through this brief and it has been excellent. I'm not sure if any of my colleagues have further questions, but I certainly don't have any more.

1630

Mr Bob Huget (Sarnia): Thank you for your presentation. In point 1 on page 3 you state:

"There is currently no provincial legislation which either requires riders to have training or for the province and municipalities to meet certain standards to provide for a safe bicycle infrastructure. To introduce legislation which only deals with the aspect of safety in collisions and does not deal with accident prevention or safe cycling opportunities is, at best, incomplete."

I want to tell you that I wholeheartedly support that statement and I believe it to be true. I guess my question to you is, would you be supportive of mandatory safety training for riders?

Mr Sehmrau: Right now anybody who uses the roadway in or on any other vehicle has to have some kind of training, but you can take a bicycle on a roadway without training. So to introduce legislation that wouldn't require that seems to me to be incomplete. Currently municipalities don't have to provide bicycle lanes. So we're basically saying, "Put on your helmets and go out there and fight with the cars." I think municipalities who are attempting to contribute to a better environment by asking people to ride bicycles should take some care in providing the safe infrastructure for it—maybe not only municipalities. I think it's a public responsibility, so I think the legislation should perhaps enable some of that kind of thing to happen.

Mr Huget: You've answered the second part of my question, around the municipalities. I do think they have a responsibility as well. Clearly bicycles more and more are going to be a factor to deal with on the roads, and bicycles and cars don't mix, especially if nobody follows the safety rules. So the municipal question is an important one. I think we have to move in that direction too, to encourage some kind of safe environment for bicycle use. I think there's a responsibility to do that.

Mr Sehmrau: I'd like to add a comment to Dan Waters's suggestion of incentives. One of the things we find very workable is working with the private sector. We see all kinds of incentives for people to open up bank accounts and get a free toaster, so I don't know why kids can't open the bank account and get a free bicycle helmet. I think there's a way to do all kinds of things without necessarily incurring public expenditure either. But it would require some work, and I think the efforts are worthwhile.

Ms Murdock: Well, okay. Thanks. Sorry, I thought I'd be recognized by the Chair by name, but that's all right, Mr Chair.

The Chair: I'll recognize you by name anyplace, any time.

Ms Murdock: I agree with Mr Huget and I agree with you in terms of the infrastructure being a necessity for the protection of those who are using it.

I don't know how old you are and I'm not asking, but when I was growing up in Sudbury—actually, the Deputy Minister of the Solicitor General's office is from Sudbury as well and he remembers this guy—we had a sergeant named Archie Stewart who was assigned to all the elementary level schools in the city of Sudbury. He was an older police officer, I guess, who was basically in charge of all the elementary school kids in the entire city of Sudbury. He was also in charge of all the safety patrols. I can remember growing up with him, because I was a safety patrol and we had to go through bicycle safety courses. If Archie Stewart and his minions didn't pass you, you were not allowed to ride your bike; you got demerit points for being safety patrols.

I don't know whether the kids nowadays are so sophisticated that they've gotten past that—I don't believe that's the case at all; I think we can start them younger if necessary—but I know it's looked at as a cost rather than as cost-effective. That's a shame, because I think that within the regional and local police forces it should be more emphasized. In the end it saves money.

The second point on the infrastructure is that it's sort of ironic that one of the cases we raised a hue and cry about on the insurance issue, as Mr Kormos stated, was—I think it was in Hamilton—the trail bikes, dirt bikes on municipal property with signs posted that said “No trespassing, municipal property.” They had a fence up; dirt bikes got in anyway. They ended up with a crash, multimillion dollars in liabilities. Then all the insurance companies of course hiked everybody's fees up. Municipalities freaked in terms of how much they were paying. Then a few years later the Ontario Court of Appeal overturned the decision and reduced the fees significantly.

Mr Sehmrau: That was the Brampton case.

Ms Murdock: That was on posted property and it still occurred. I know municipalities are going to give this long, hard thought as to where they're going to go with it. We'll have to do a great sales job with them, but it's a very valid point.

Mr Sehmrau: It's interesting on that point. The town of Caledon has just acquired the abandoned railway right of way that runs right through the town of Caledon and it has declared it as a park and designated certain uses, including cycling. They discussed it with their insurance company and it was just added as another park, without an increase in insurance fees. So the insurance companies see the permitted uses of cycling as being a very safe one, provided the facility is safe.

The Chair: Thank you, sir. Just so you have perhaps a little better feel of what the committee has been doing for some significant time now with this legislation, the com-

mittee has been very concerned with accident prevention, safe cycling, and has addressed that in a number of ways, recognizing that this bill is designed to do but one thing and it is simply, at its best, eventually a part of a much bigger set of standards and processes.

Of course, we're well aware of the bicycling committee of the Ministry of Transportation, that oh-so-elusive bicycling committee that we're going to get more concrete information on, as well as the Ministry of Transportation's driver safety accident prevention program. I suspect that their interest in this legislation is a part of that whole process which is not going to be a short one, which is going to be a lengthy one. So we did want you to know that.

On behalf of the committee I want to thank you very much for what is a very in-depth report and a very helpful participation in the dialogue. We thank you and we appreciate it. We trust you'll be available to us should we need your expertise down the road, sir.

Mr Sehmrau: Thank you. We appreciate the opportunity to provide the input and certainly would like to contribute to the safety of cycling in Ontario.

The Chair: We're going to have a three-minute adjournment before we resume to discuss the matter of issues.

The committee recessed at 1637.

1641

The Chair: Thank you. We've resumed and we will be adjourning. However, prior to adjourning, I want to advise people that the matters to be dealt with will be a consideration of issues as described in the process issues papers, which were adopted as a formula or a guideline.

We are asking that the Ministry of Transportation give us a lawyer to be with us during the course of that consideration to guide us through some of the legal complexities, and reminding caucuses that this has the capacity to be somewhat contentious at points. If people aren't here representing their caucuses, God bless, but it would be awful difficult for them to suggest a day or months or at any time down the road that somehow the decision-making that took place was out of tune or in discord, out of sync with what they would do, so urging caucuses to be represented.

I want to thank once again from the Ministry of Tourism and Recreation, Uwe Sehmrau; Mike Weir, who is here; Dave Edgar, right-hand person to the minister himself, who is here once again, and of course Superintendent Hutton and Ms Fantopolous for coming today on behalf of the Solicitor General and assisting us.

We are adjourned till Monday, May 25, at 3:30 pm. Thank you, people.

The committee adjourned at 1644.

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- *Cunningham, Dianne (London North/-Nord PC) for Mr Turnbull

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Standing committee on resources development

Highway Traffic
Amendment Act, 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant
le Code de la route

Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 25 May 1992

The committee met at 1701 in committee room 1.

HIGHWAY TRAFFIC AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT LE CODE DE LA ROUTE

Resuming consideration of Bill 124, An Act to amend the Highway Traffic Act / Loi portant modification du Code de la route.

The Vice-Chair (Mr Daniel Waters): We'll call the meeting to order. This is the standing committee on resources development re Bill 124. Mrs Cunningham had some remarks she wished to make at the beginning of the meeting.

Mrs Dianne Cunningham (London North): With apologies to the Ministry of Transportation officials, but you might be interested, from time to time there are a lot of states and provinces looking at what Ontario is doing, so my staff get phone calls. If it's interesting, they usually put it in the form of notes. I sometimes tell people and sometimes I don't—there's so much information—but I thought the committee might like this.

The New England Journal of Medicine is a very prestigious journal to be published in. A couple of weeks ago we heard from a doctor at the Johns Hopkins Injury Prevention Centre who has done more research and has submitted yet another paper to the New England Journal of Medicine. His name is Dr Peter Bieleon. He and Dr Andrew Danninberg have conducted a study on the effects of bike helmet use and injury prevention.

Now you just wouldn't be able to do this in very many places, but the reason they're doing it is that one of the counties they've been looking at is Howard county in Maryland. So they compared Howard county, which has both a mandatory helmet use law for people under 16 and mandatory education, to Montgomery county, right next door, which has just the mandatory education with no law. They have introduced a law since the research took place. Third, in the middle of all of this, in Maryland of course, is the city of Baltimore, which has neither mandatory education nor the law.

Their article has been submitted, but it's yet to be accepted. They're hoping for acceptance. They'll send us a copy. They wanted to discuss the findings with us. The most important finding was that a mandatory helmet use law significantly increases bike helmet use. Of course, we're all sitting here and saying, "I would hope so," but this is not Utopia. As you know, I came down in a cab today. The cab driver wasn't wearing his seatbelt, nor did the other front seat have a seatbelt that worked. So because we have laws, we should have a lot of empathy for our enforcement officers.

The manufacturers in Maryland say that they could provide helmets for \$11 or \$12 if there were more laws

and a greater demand for helmets. I don't know what their population is. We should probably look at that.

That was on 20 May. Today we got another phone call. These physicians are very excited about what's happening in Ontario and will be sending us the study and its results. Today Dr Andrew Danninberg called. He's very excited that Ontario legislators are studying the issue and encouraged us to use the study as a reference, so we can look at it and see if it's helpful to us.

They conducted the survey in two parts. They had an observational study. I thought this was interesting. They counted children on the street riding their bicycles between the time the bill was passed and the time it came into effect. They had the phase-in period we're thinking of. The helmet use increased from 4% to 46%. I think their phase-in period—I'm not sure, Mike—was probably about nine months. I think they talked about it in the fall and introduced it in the spring.

Mr Michael Weir: This was Howard county?

Mrs Cunningham: Yes, but I'm not sure. It wasn't very long, I remember. They mailed their survey to the schools. This was the second part. They had a survey and questions such as, "Did you wear a helmet in the last month?" were asked about the helmet. The survey was sent to grades 4, 7 and 9. I think this is interesting. I never would have thought to do this. In this time frame, helmet use increased from 11% to 37%. So this was another study, still counting but in a different way, asking the children as opposed to just counting people on the street.

Their main conclusions were that helmet compliance is greater among younger children and helmet compliance increases when there is both education and a law. So although we talk about a certain compliance level before we introduce it into a community, I think we can clearly see that the best they had was 11%—at least the students said that—and it went up to 37%. If we waited for 25%, we'd probably be waiting for a long time, because even with a law, in nine months or so they got 37%. In just counting, the best they had was 4%, and even with the law, they've got 46%.

My guess is over time, a couple of years, maybe three years, people will look silly if they don't have a helmet, but I think it's that kind of commonsense, practical approach that no matter what we have with our phase-in period, at least from my point of view, and even with the law, we can't expect 100% of the people to be complying within three months, obviously, or even nine months. With a longer phase-in period, maybe we will and maybe we won't, I don't know.

I just thought you'd be interested that they've done this research. I think it's helpful to us.

Ms Sharon Murdock (Sudbury): You made a comment, I believe, that Maryland as a state was going to be able to sell the helmet for \$11 or \$12. Is that correct?

Mrs Cunningham: Yes, that's what they're saying in the state of Maryland. The manufacturers are advising the legislature.

Ms Murdock: I guess you wouldn't know, or would you be able to find out whether those would be the helmets that would be acceptable in Ontario as approved? Remember the question we asked last week.

Mrs Cunningham: Their law does state—would it have all three, Mike? Probably the two.

Mr Weir: They'll accept the helmets that are approved by the American National Standards Institute and Snell, and I think they leave room for others by saying, "A helmet approved by the director," which allows for other helmets that may be equally as good.

Ms Murdock: The officer who was here from the Solicitor General's office made a comment at the end. I don't believe he was recorded, but he was concerned that the cost of the helmets worn by police officers who are bicycling now in the summer months in Toronto was significantly greater than what we as a committee were seeing they were available at. While we were saying around the \$20 to \$25 mark, he was saying something like \$90.

Mrs Cunningham: When I went into the stores and I took a look at what's available for \$25 or \$30, when you mail away or when the people come out to you, the distributors, they have the three approval stickers on them. When you go into a sporting goods store—and I have to admit this myself, my own boys who are in their 20s, three of them, chose different helmets and chose to pay more money for things that had the same stickers on them, but they were snazzy looking and hard-shelled. So people are inclined to do that if they've got the money. The ones I wear and the kids next door wear are the ones that are distributed for \$25 or \$30 and they too have the stickers on them. I don't know what to say about that.

Ms Murdock: But the standard is the same?

Mrs Cunningham: Oh, yes. They've all been tested. Some people just want this different look. The people in the bicycle shop didn't say one was better than the other, all they said was that they were approved. It's interesting.

Ms Murdock: But the gentleman who was here that day indicated that he thought the helmets they were buying for their police officers were better and it was a concern of his, that's all.

Mrs Cunningham: There's something else I wanted to share just for a minute. We'll pass these around later, but we have to say thank you to the Metropolitan Police Force who are constantly doing something in the way of public education. The most recent pamphlet is called *You and Your Bicycle*, and it's just great. It gives all the safety tips. Then of course there's the other group which is the city of Toronto cycling committee. They have a pamphlet out too and it's just excellent stuff that other municipalities could do. It's all with regard to safety. I'll pass around the last page.

It says, "Here's a list of some of the fines for offences under the Highway Traffic Act," which we're going to have to look at today: "Careless driving: motorists and cyclists \$253.75; disobey stop sign—fail to stop: motorists and cyclists \$78.75; fail to yield to pedestrians: motorists and cyclists \$78.75; fail to signal a turn: motorists and cyclists, \$78.75; open door into traffic: motorists, \$78.75; fail to obey signals, motorists, cyclists and pedestrians, \$78.75." That's the Highway Traffic Act, which we're looking at.

One of the bylaws in the municipality of Metropolitan Toronto is "Fail to yield to vehicles when crossing roadway: pedestrians \$83.75." I had no idea. "Bicycle—ride on sidewalk: cyclists \$83.75." We're moaning about having more fines. They're there now. Anyway, I thought I'd pass that on.

1710

MINISTRY OF TRANSPORTATION

The Acting Chair (Mr Bob Huget): Thank you. I understand the agenda has a presentation from the Ministry of Transportation. I would ask you both to identify yourselves and proceed with your presentation.

Mr Weir: I am Michael Weir, safety policy officer with the road user safety office, Ministry of Transportation.

Miss Nina Chyz: I'm Nina Chyz, legislation counsel with the legal services branch.

Mr Weir: At the last meeting a motion was put forward by Ms Murdock that we would come and try to elaborate on the definition of "highway," what it includes and what it doesn't include. That's why we're here today.

Miss Chyz: Initially, I would like to say the definition of "highway" in the Highway Traffic Act applies equally to provincial highways and to municipal roads. Perhaps I should read the definitions.

The highway definition in the Highway Traffic Act in section 1 provides, "'highway' includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof." In other words, it's fence to fence.

We should also probably look at the definition of highway in the Municipal Act which follows the definition in the Highway Traffic Act quite closely, and it says, "'highway' means a common and public highway, and includes a street and a bridge forming part of a highway or on, over or across which a highway passes."

Also, the Municipal Act, section 261, defines what constitutes a public highway and it states:

"Except in so far as they have been stopped up according to law, all allowances for roads made by the crown surveyors, all highways laid out or established under the authority of any statute, all roads on which public money has been spent for opening them or on which statute labour has been usually performed, all roads passing through Indian lands, all roads dedicated by the owner of the land to public use, and all alterations and deviations of and all

bridges over any such allowance for road, highway or road are common and public highways."

The courts have also come up with decisions defining what a highway means. In the case of Consumers' Gas against Toronto it was held that unless the meaning of highway is affected by context, association or definition, highway in the ordinary sense means a public road or way open equally to anyone for travel.

The definition of highway in the HTA generally contemplates well-defined travelling areas. The words "for the passage of vehicles" contemplate movement of vehicles between or across the area from points within to points outside the area. This definition then would exclude such things as shopping malls or parking areas where the paramount intent is to regulate the parking and not the movement of traffic from point to point.

The definition also requires that the area in question be open as a matter of right to all members of the public. For such a right to arise, there must be a dedication of land by the owner to the public and acceptance by the public, and this generally occurs where no permission is required and the public uses the area for travelling from point to point.

Based on the foregoing, if the land is dedicated or designated as a public road and there has been an acceptance of such dedication or designation by the public and unrestricted use has been made for passage of vehicles, the area will come within the definition of "highway" in the Highway Traffic Act.

I should also point out, perhaps, that there are a number of criteria you can refer to in making a determination of whether this is a highway or not. I've already mentioned the paramountcy of the uses: Is it really just for parking or is it to get the public moving from one point to another? Is there an acceptance by the public of this dedication; are they actually using it as such? Are public funds expended, is public money being used for this? You have private roads, but if they're dedicated to the public, then again you need an acceptance by the public of this area. Is the area the sole access for vehicular traffic? Where does it lead? Does it come to a dead end or is it the sole access to some area that the public has to traverse to get from point A to B? The volume of traffic also: The greater the volume, the more indication that this is probably used by the public as a public highway. It has to be unrestricted. Is it open all year, 24 hours a day? Because if it's closed at any time, then people are being restricted from using it and it no longer falls within that definition of "highway." Does the area operate as an essential thoroughfare? These are criteria one looks at.

Basically, I suppose, from this committee's point of view, the definition of "highway" would apply to anything that's a highway, which, as I said, includes municipal roads. It does not apply to any other municipal property: municipal parks, vacant land, off-highway situations. I think what you would require in these circumstances would be municipal bylaws, and those should be provided in the Municipal Act or, if the authority for that is lacking, the Highway Traffic Act would stipulate that the municipalities may regulate by bylaw, and then it would be up to the municipalities to regulate in such a fashion. It generally

doesn't include a school yard or, as I've mentioned, all sorts of parking lots at malls, behind apartment buildings.

If the committee would like to ask questions, it might make it easier for me to respond.

The Acting Chair: Thank you very much. Questions?

Ms Murdock: Restriction in a parking lot: In the parking lot of a shopping mall, for example, in order to get to the parking area you have to have movement of traffic from point A to point B. Would that portion of it be classified as public?

Miss Chyz: Probably the highway that leads you to the mall, but otherwise it's a private property and the authorities there can block it off, as they do at Yorkdale; they use chains, and there are certain hours within which you can use it. That is no longer what could be a highway.

1720

Ms Murdock: The other question has to do with roads that are closed for the winter. They are still roads. I mean, it's still a public highway or access road or whatever designated for the use of vehicular traffic.

Miss Chyz: When you're saying they're closed for the winter—

Ms Murdock: You said it had to be 24 hours a day year-round.

Miss Chyz: Again, it depends on the context. If for some reason it's unsafe to travel at that time, it still may be a public highway except that conditions may be—if it's very far up north that no one can get—

Ms Murdock: So skidoo trails and that would not—

Miss Chyz: They are not a highway.

Ms Murdock: Unless they used a roadway. Okay, thanks.

Mrs Cunningham: I'm trying to get my head around this with regard to what you've just said. We're different from the legislation we're able to compare ourselves to, because we're looking at the definition of "highway" for the whole province. I'm sure the state of Maryland would have a definition of a highway for a whole province, but the laws we're able to look at now are counties within the state. They have done what you have suggested, that if municipalities or counties within the province of Ontario think the definition of "highway" too broad under the Highway Traffic Act, and if we choose not to change it as a committee for the purpose of the bicycle, then they themselves would have to make their own bylaws. Is that what you're saying?

Miss Chyz: No. What I have said is that because "highway" under the Highway Traffic Act includes municipal roads as well as provincial highways, then it can be regulated through the Highway Traffic Act, but anything else that doesn't come within that definition can be controlled by municipalities provided they have the bylaw power to regulate; that would be any land they own that would be off-highway, because I think the on-highway situation is covered.

Mrs Cunningham: Okay. Can I give you three examples that at least Howard county felt were important. They

said "public roadway," which is covered under our act now and would be; we wouldn't have to change it. They say "bicycle path." I don't see that in our act now.

Miss Chyz: No. Generally if it goes through a park or wherever it is—again, these are municipal bylaws. I believe some areas may have regulatory power to regulate bicycle riding on paths within the municipality.

Mrs Cunningham: It does say in our act "intended for or used by the general public for the passage of vehicles," and a vehicle is a bicycle. Wouldn't that be a pathway, a bicycle path?

Miss Chyz: It's a pathway but it's not designated as a highway. You have all the various criteria, and I don't think that it would meet all.

Mrs Cunningham: The reason I'm saying that—are you looking at chapter 8 in the definitions of the Highway Traffic Act, where it says "includes a common and public highway, street, avenue, parkway, driveway"—I'm trying to think vehicle, bicycle on any one of these. It says here "common and public driveway," not private. None of this is private.

It goes so far as to say bicycles "in a square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles"—which is defined later on as a bicycle—"and includes the area between the lateral property lines thereof"—whatever that means; I don't care. So that's what I'm looking at.

Mrs Cunningham: Then I'm looking at words in the other act, which I think are important for us: "public roadway"—which you've said, yes—"bicycle path, right of way and public owned facilities, parks" etc. This is where kids ride bikes. Some of that would be in the act, I suppose, and some of those instances would be in our act now but some would not. I'm just trying to compare the two. My view would have been that a bicycle path would be covered, but you're saying not likely.

Miss Chyz: Not under the court decisions. It's unlikely. It's not for the general use; it's restricted to the bicycles. Again, to cover it through the Highway Traffic Act—the bicycle path is generally something that's set aside by a municipality.

Mrs Cunningham: So if we felt strongly about a bicycle path, because this wasn't clear, we could add bicycle path.

Miss Chyz: Right, it would be designated as a bicycle path. I don't think it would be designated as a highway, as such.

Mrs Cunningham: Except under "highway" includes—a bridge is designated as a highway; a place, whatever that is, is a highway; a square is a highway. So if we just added "bicycle path" and we added "publicly owned facilities, parks"—boy, if I were a judge some day.

Clearly, in Ontario on a bicycle path one should have a bicycle helmet, in my view. We shouldn't have to wait for every municipality to pass a bylaw. I think that ought to be our criterion, but you're here to give us advice.

Mr Weir: I think it's your objective to get helmets on people's heads and I think the proposal you put forward

would in time accomplish that. I think the majority of people who use off-highway areas to ride their bikes in most cases have to use a street or a road or the things we believe constitute a highway to get to their off-highway destination. I don't see people taking their helmets off when they get there because it's not at this point in time a legal requirement for them to wear it, if they're wearing it anyway on their way there.

I also believe that if the law were implemented and applied to what we believe is a highway and people respected that law and thought that law had credibility—why would they feel that law has credibility? Because they believe that people should wear helmets. If that's the case, then they'll wear them off-highway as well.

This is a major policy change we're talking about for cyclists here. I believe it is not at all inappropriate to start with the proposal as you've proposed it and go from there. Has anybody written to the Association of Municipalities of Ontario? Are they aware of your proposal?

Mrs Cunningham: They're aware of it. It was the one group we did want to have before the committee, but in my view, we haven't asked them. They're definitely aware of this. We should do that; we have to follow through on that and ask them their opinion.

Mr Weir: I'm not sure—and I think you stated it earlier—that with a stroke of a pen you can make it a Utopian world, but you have to start somewhere.

Ms Murdock: Just a question on that utility or gas company case. Is it the only precedent that defines "highway"? The case you referred to.

Miss Chyz: Oh, that one. No, there are many others, and there are cases that tell you what is not a highway. The courts have to decide on the facts. Also, when we talk about the highway, it's how you built the highway and what's required for it, and I don't think that's contemplated for a bicycle path. "Highway" is also used, for instance, in the Public Transportation and Highway Improvement Act.

Ms Murdock: Courts look at the intent of the legislators.

Miss Chyz: I think they would follow some of the criteria I have listed and would see whether it meets those. Obviously, if it has been designated as a highway—there are designation plans, so that you can readily find. If public money has been spent on it, then you don't have a question that it's a highway.

1730

Ms Murdock: I recognize that the Ministry of Transportation doesn't particularly want to extend the definition, even though you're not saying that. But I'm saying that in truth, if this should come to pass, as we think it will, judges in the courts, or JPs, as the case may be, if they're not clear or not sure would be looking at the intent of the legislation at the time of enactment in terms of seeing what we intended when we put it through. So it would end up that they would go back and use that and build it up as another criterion, wouldn't they, based on all the cases you've looked at?

Miss Chyz: By including bicycle paths in here? Is that what you're stating?

Mr Weir: I think you're trying to paint a scenario here where perhaps someone on a bicycle path is charged—

Ms Murdock: Yes, after the education phase.

Mr Weir: —and it has gone to court and he's charged under a section which would be in the Highway Traffic Act. How would the court determine whether or not that person was on a highway?

Ms Murdock: The criteria that have been built over time, that you listed earlier.

Miss Chyz: So the defence would be that this didn't happen on a highway and the prosecution would have to establish that it did.

Ms Murdock: And that new criteria would be developed in relation to bicycle helmets. That's, in all likelihood, what would happen.

Miss Chyz: I guess if you have to wear the bicycle helmet everywhere, then it doesn't really matter whether it's highway or off-highway. But what we're dealing with here is, if it just applies to highways, then what are we capturing by that definition?

Ms Murdock: No. I don't agree with you. What we're saying is that if we only amend the Highway Traffic Act, then we are confined to what the definitions within the Highway Traffic Act state. So although we have clearly indicated we would like everybody to wear bicycle helmets everywhere—while they're riding a bicycle, of course—unless we amend the definition, that's not going to happen. That is what we're hearing from you, basically.

Miss Chyz: My opinion is that a bicycle path as such does not come within the definition of "highway."

Ms Murdock: But should an infraction of the proposed or the eventual law occur to the new section, whatever the new section would be—

Mr Weir: And I'm not so sure it won't happen. I think the objective here is to get helmets on people's heads, not to get a bill passed through the House; maybe the two go hand in hand. But I think if a bill is passed in what I believe is already a very extensive way, by covering what is a highway you will be capturing the majority of the people, and if it's done right, hopefully the majority of people will respect it and comply with it everywhere.

Ms Murdock: I don't disagree with you on that. You usually have to travel at least on your driveway or on the street to get to the park anyway.

Mr Weir: At some point or another. I'm speculating, but if it works on the highway, I would suggest there would be probably a high level of usage rate in off-highway areas as well.

Mrs Cunningham: I certainly agree. I just think it's our responsibility to be asking all these questions, because we're going to get them. When I see how laws are made in the province, I think this is a refreshing example of at least where some members can ask the gutsy questions and understand things before we see it in law, so I'm going to ask you a couple more questions, if you don't mind.

The other legislation we looked at, because we tried to get it down to two or three pieces that were useful, was the state of New Jersey. That's the whole state; it is a state law. They talk in their law about a person under 14 years of age. These laws focus more on kids when they make exceptions. Andrea Strathdee, my staff person, tells me that the state of New Jersey legislation seems to have more exemptions. They go right into saying that "the director"—who's defined—"shall publish a list of bicycle helmets which meet the standards." I'm just giving an example.

Then they go on to talk about the requirements of the municipality with regard to people on bicycles. Then they go on to talk about "on a road or highway closed to motor vehicle traffic and limited to pedestrian or bicycle use at all times or during specified periods of time during which bicycles may be operated." They have to have helmets there. These are our bike paths. Then they talk about "exclusively on a trail route, course, boardwalk, path or other area" specifically for bicycles again. I think what you're telling us is that we don't need to get into that kind of detail at this point.

Mr Weir: That's what I essentially said.

Mrs Cunningham: Our objective is to get more people wearing helmets. I have to tell you that I don't see too many people with these white lights on the back of bicycles right now, which is the law. Since I found that out, I look. They just don't exist. Or red ones—I'm sorry. That's why the white ones don't exist. There are some red, but not as many as one would like to see.

I'm pretty well convinced—I don't know how my colleagues feel—that I don't want to get into changing it so extensively that we lose it. We want to see compliance, but it does make me nervous about the very first municipality or school board to start having a heavy hand over children who are riding their bikes in school yards and sending them home. I guess school boards can have their own rules, as they do now, don't they?

Mr Weir: Yes, they can, and I think they have some responsibility.

Ms Murdock: Then there's—

The Acting Chair: Excuse me, Ms Murdock. Are you finished?

Mrs Cunningham: I can see there's going to be further discussion, but before our expert witness tells us any more I did want to ask the questions on exemptions and on who, meaning age, and to talk about the fine. I want to get their opinion on those three issues from their point of view as legislative counsel in this ministry, but not if Ms Murdock has more questions about the highway. I think it's important to complete that first.

Ms Murdock: About the private property. I think it was clearly stated in the last session that with regard to insurance companies and liability insurance on private property such as parking lots, and I would guess school yards as well and municipal property that wouldn't be designated "highway," should you have an accident there, the owner of the property could be liable, right?

Miss Chyz: Right.

Ms Murdock: But that isn't going to help you not wearing a helmet unless it was through mitigation—

Mrs Cunningham: They're probably liable now. Is that your point?

Ms Murdock: Yes, and that doesn't change. I suppose if there were a law that said everywhere else you had to wear a helmet and you didn't wear a helmet it could go to mitigation—

Mr Weir: I think that's a civil matter in the apportionment of damages.

Miss Chyz: It's a civil matter, and again it's a question of where they permit it. Has the owner has taken all precautions to keep people out from using the property?

Ms Murdock: So putting up signs to make sure bicyclists wear bike helmets.

Miss Chyz: Well, that may not be sufficient, because if you still allow them to play around and an injury occurs, maybe you have been permissive in allowing them in.

Ms Murdock: Whatever. There's a way around it, I think.

Mrs Cunningham: Could we move on to your opinion on the who; that if children under 12 years of age are to be included, some legislative changes are required? Would your ministry would want to respond to that, or should we be talking to—

Mr Weir: Would you repeat that?

Mrs Cunningham: If children under 12 years of age are to be included. Otherwise, if we talk about children, my view is that is exactly who we'll be talking about. I think probably everybody in this group will stick their necks out and say you have to have the role models as well as the children. That's my guess. We haven't talked about it, but just from the questions I think that might be so. If children under 12 years of age are to be included, some legislative changes are required, I'm assuming, outside of this ministry and elsewhere.

Mr Weir: No legislative changes would be required to this bill that I'm aware of. There are many sections in the act that say "every person shall" and it applies sort of across the board.

1740

Miss Chyz: Right. Under the Provincial Offences Act you can charge persons under 12. You may not get convictions against them, but charges may be laid. I suppose the other thing to look at is who really has control of the children, whether they should be responsible in any way for their conduct.

Mrs Cunningham: If we look at precedents for that in other jurisdictions, we talk about "the parent, guardian or legal guardian of a minor shall not authorize or knowingly permit the minor to violate this subtitle." So in fact the parent, guardian or legal guardian is responsible. Does that have to be part of this act?

Miss Chyz: If you did want to make the guardian or parent responsible, you would require something similar.

Mr Weir: Yes. If you wanted to hold the parent or legal guardian responsible, you would have to put forward

a motion to amend this bill, to include a subsection to that effect.

Mrs Cunningham: To be consistent with other legislation, ie, the Provincial Offences Act, it would be any person less than 12 years, as opposed to 16 in one state and 14 in the other state.

Mr Weir: Yes.

Mrs Cunningham: Okay, and We've answered the question of where. "The current legislation is quite comprehensive but does not include areas such as school yards or parks." We've had a discussion around that today and we understand what will happen there.

The penalty is your ministry. The current penalty for all offences is \$75 plus court costs or \$78.75. Is this appropriate in this case? We've talked about legislation that makes good sense, like asking them to produce a helmet within 48 hours. Is that the kind of thing we would put amend here?

Mr Weir: I wouldn't think so initially. I feel the objective is to get the helmet on the head, not merely to show up in court and show proof that you own one. I don't think that meets the intent of your proposal. The fine levels, the \$75 plus court costs, is the out-of-court payment that's been set by the chief judge of Ontario for most other rules of the road that apply equally to motorists and cyclists. I see those to be quite appropriate. The fine often will indicate—

Miss Chyz: How serious the offence is.

Mr Weir: People will perceive it to be associated with severity or with how important the public—and let me broaden that—or how the Legislature views this issue to be. Since all other rules of the road are currently viewed in that way, I don't see why this should be treated any differently. I don't think you would want to lessen the perception.

Mrs Cunningham: Then my question is that right now—I keep going back to this red light on the back of a bicycle—if an enforcement officer were to point this out and produce what we refer to as a ticket, one would simply have to pay that fine.

Mr Weir: Or plead not guilty and take your chances, yes.

Mrs Cunningham: All right. The police officers who came before this committee talked about encouraging children to buy helmets or whatever now, without any legislation. We've talked about changing the act or producing regulations or guidelines that go with the act. I think most members of this committee think that's a punitive way of dealing with it: charging somebody \$78. They'd rather they had the helmets. I know public education would be an easy answer, but is there some way we could have guidelines or regulations that go with legislation?

Mr Weir: In terms of enforcement practice?

Mrs Cunningham: In terms of enforcement practices, or does it always have to stay with the local police authority?

Mr Weir: Yes. I don't want to speak on behalf of the Solicitor General, but most police organizations have administrative guidelines that govern their enforcement practices. You can recommend some enforcement guidelines.

Whether they choose to actually adopt them and incorporate them into their practices is up to them.

Mrs Cunningham: That would be the best we could do, though, is recommend some guidelines for enforcement practices?

Mr Weir: Yes, I would think that's appropriate. If there was enough of a lead time before the law actually became effective—now that you've warned me away against the public education answer, I'm going to use it—and public education was used during that time when the groundwork was being laid, so to speak, by the time the law came into place everybody should know it's the law.

Ms Murdock: Then they can start nailing them or fining them for not having the red light at the back of their bicycle. Part of the reason they don't do it is because they aren't getting stopped now.

Mrs Cunningham: We're on a roll. The penalty could be in guidelines but public education, I understand—the enforcement practices could be suggestions in guidelines. Have you ever heard of such a thing coming from a committee?

Mr Weir: No, but it doesn't strike me as being surprising.

Mrs Cunningham: This is the intent of this legislation. It could be passed as part of a report.

Mr Weir: Yes.

Mrs Cunningham: And published in that regard. I think it would make us feel better. It would certainly get some of us off the hook. It sounds awful to have to charge some child \$78.75, but I certainly appreciate your response to that. If it's important, then it has to have the same fine as not having the red light.

The last one, the date to come into force: I obviously get invited to different places where there are bicycle rallies and what not, and there seems to be a lot of impetus on this now. Have you a suggestion, having heard all of this, Mike? We'd like to live to see the light of day on this.

Mr Weir: At the last meeting I did suggest that the bill become effective on proclamation if indeed it was passed in the House. I think I said during the last session that we would certainly work towards an informal target date of, I think I said on the record, two to three years.

That's just a number, with some thought given to the types of things that would need to be done, the extent of the public education and communications programs and the planning involved in coordinating that kind of thing, in getting the manufacturers up to speed and getting the store shelves adequately stocked. I'm not sure if two to three years is the appropriate time, but it's the time we kind of felt is in the ballpark.

Mrs Cunningham: Those are my questions.

Mr Len Wood (Cochrane North): I don't know if it's a question but just a brief comment. I noticed in the papers that bicycles are considered to be very dangerous vehicles for pedestrians as well. I think it was in Toronto where there was a fatality, where the person was charged with careless driving.

We're talking about helmets being put on them, but there also should be some kind of publicity or booklet form out for not only kids, but as they are growing up, to the effect that if somebody steps off the curb in front of a bicycle it can be just as dangerous as a motorcycle or a car because there are injuries to pedestrians. Just a comment as to how we could, through the police departments, the schools, whatever, talk about both aspects of it.

Mr Weir: Sure. I think that in any public education program you would want to include things like sharing the road with other types of vehicles and with pedestrians. There's lots of material out there now; we just need to find a way, in this particular case, to disseminate it widely enough.

Mr Wood: I didn't realize—and I guess it's because I haven't heard of it before—that a person driving a bicycle and hitting somebody, if there are serious injuries or if there is death, can be charged with dangerous driving or careless driving the same as any other—I guess it just happened in the last while.

Miss Chyz: The rules of the road apply to them too.

Mr Wood: Yes, but I didn't realize the accidents were that serious. I was surprised when I saw it in the paper. They can be very dangerous vehicles. I know that sometimes you're on the sidewalk and you step out and see the cars going by and, oops, all of a sudden there's a bicycle that's travelling at the speed limit or close to it.

Mr Weir: Cyclists have some good comments about motorists too.

Mr Wood: Yes, I'm sure; the fight with pedestrians and motorcycles and motorists and vehicles on the road.

The Acting Chair: Thank you, Mr Wood. Ms Murdock.

Ms Murdock: I'll be brief, Mr Chair. The Ministry of Transportation is the one that puts out the booklets for when you want to get your driver's licence for the car.

Mr Weir: The Driver's Handbook.

Ms Murdock: Right, the Driver's Handbook. Is there a bicycle handbook?

Mr Weir: There are two, in fact. One, the Bicyclist's Handbook, is targeted at the younger kids. Then there's one targeted at teens and adults called *Cycling Skills: A Guide for Teen and Adult Cyclists*.

Ms Murdock: Are these sent to the manufacturers at all to be attached to bicycles for the appropriate age?

Mr Weir: What our communications branch does is write a letter to every retailer in the province and let them know what information we have available to them. For example, we were talking about helmets: A couple of years ago we ran a campaign in conjunction with Canadian Tire and sent hang tags, which encouraged helmet use, to every retailer. So the information is available and the retailers are made aware of what we have.

Ms Murdock: How often would that letter be sent?

Mr Weir: Once a year, and we cart them off to bicycle functions. Wherever we might run into a cyclist we come prepared.

Ms Murdock: Do you work at all with the OPP on this? I know in my riding I just heard on the weekend—the OPP have a show on the cable channel and they are having bicycle carnivals, I guess they are.

Mr Weir: Rodeos?

Ms Murdock: Rodeos. I wonder if the Ministry of Transportation was involved in that at all.

Mr Weir: In fact, most of the police use a program that we developed back in the 1970s, and it's been amended from time to time, called the Go Safely Cyclers' Course.

Ms Murdock: That's what it is.

Mr Weir: Yes. That's our program.

The Acting Chair: Any further questions? There being none, thank you very much for coming down this afternoon. We apologize for the delay; sorry to keep you waiting. It seems we're always keeping you waiting, and we appreciate your patience.

Mr Weir: My pleasure. Thank you.

The Acting Chair: There being no further business before the committee, we'll adjourn till 3:30 Wednesday. I remind the subcommittee members that there is a meeting on Wednesday. There is as yet no agenda, so the subcommittee may want to consider what exactly it is going to do this Wednesday and advise the rest of the committee.

The committee adjourned at 1754.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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***Wood, Len** (Cochrane North/-Nord ND)

Substitutions / Membres remplaçants:

***Cunningham, Dianne** (London North/-Nord PC) for Mr Turnbull

***In attendance / présents**

Clerk / Greffier: Brown, Harold

Staff / Personnel: Anderson, Anne, research officer, Legislative Research Service

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Wednesday 27 May 1992

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Mercredi 27 mai 1992

Standing committee on resources development

Highway Traffic
Amendment Act, 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant
le Code de la route

Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 27 May 1992

The committee met at 1602 in committee room 1.

HIGHWAY TRAFFIC AMENDMENT ACT, 1992

LOI DE 1992 MODIFIANT LE CODE DE LA ROUTE

Resuming consideration of Bill 124, An Act to amend the Highway Traffic Act / Loi portant modification du Code de la route.

The Vice-Chair (Mr Daniel Waters): I call the meeting to order. Today, we're to deal with further consideration of Bill 124. I believe Ms Cunningham wanted to go through and we were going to work on some proposals to put forward.

Mrs Dianne Cunningham (London North): The document we're going to be working from is dated May 11, 1992. It's a memorandum to our committee from Anne Anderson with regard to the process and the issues. Although we've made some efforts here, I think we should probably be reminded about the process, Mr Chairman. I'm not sure whether you want to do it or whether we want Ms Anderson to do that, but I think we should be reminded about where we're at and what we want to accomplish today. I feel we can do it, given the information we've been given.

The Vice-Chair: Maybe we should get Ms Anderson to do it.

Ms Anne Anderson: The process we were recommending to the committee was that the committee go through the list of issues and make some decisions on the things it feels are important, including not only the policy decisions, but also whether it feels it should be in the legislation or a recommendation for the regulations or in a report.

These thoughts then would go forward to an inter-ministerial committee which the Ministry of Transportation is putting together as the lead ministry, of a variety of ministries that would be affected by the bill. That committee would respond to this committee's recommendations and decisions, it would come back to the committee here, and at that point the committee would look at those suggestions and decide how to proceed from there, whether to incorporate them in the bill, to incorporate suggestions into recommended regulations, and proceed from that point. I think the point today would be for this committee to resolve some of the questions it's had concerning the issues.

The Vice-Chair: Thank you for that. Maybe then what we should do is go through the document starting with the issues on the top of page 3, open discussion starting with the first issue, go through it and see where we have concerns and where we all have agreement. We would start with the number one issue of who will be covered by the legislation. Is there any discussion on that? Everyone is happy with that?

Mr David Turnbull (York Mills): I certainly hope it is the intent to include children under 12; just a question whether children under 12 years are to be included. I rather suggest there's some question about that.

The Vice-Chair: Indeed, there has been some discussion about whether to include children under 12, so Mr Turnbull has opened up the discussion. Is there any other discussion on this?

Mrs Cunningham: In the act right now, at the very beginning—and I'm going to read the clause for everybody—"No person shall ride on or operate a motorcycle, motor assisted bicycle or bicycle on a highway unless he or she is wearing a helmet that complies with the regulations and the chin strap of the helmet is securely fastened under the chin."

So what we have now is all ages. We were told that in fact there is no legislative change required for children under 12 because they're already covered under the Provincial Offences Act. Monday we were told by Miss Chyz that under the Provincial Offences Act you can charge persons under 12; you can do that. You may not get convictions against them, but charges may still be laid.

I suppose the other thing is to look at who really has control of the children and whether they should be responsible in any way for their conduct. Later on, in the response, I think we'll have the opportunity to talk about what the penalty ought to be if in fact we were getting at the responsibility of the parent.

With regard to who should be covered, right now everyone's covered. I think it was the intent of this committee that—well, why should I say that? So far, I think most of us haven't thought about excluding anybody, so I think we have to say in this "who," if children under 12 years of age are to be included, we should take out "some legislative changes are required," because we don't have to do that, but I think we could say the legislation could include a clause that holds the parents legally responsible.

I have before me a letter dated May 20, 1992, to the clerk from the policy adviser in the Ministry of the Solicitor General, Irene Fantopolous, who you remember was here. We asked her to look at this issue and she has given us a clause. The question was, "Can parents be made vicariously liable for their child's failure to wear a helmet while riding a bicycle?" That was our question to her.

This is her response. "In discussions with the Ministry of Transportation, it is agreed that any attempt to make parents vicariously liable would impose extreme hardship on them. The clause suggested by MTO and set out below may be a viable alternative." Perhaps we should refer this to that committee, and I'll read it. "No parent, guardian or legal custodian of a person under 16 years of age shall authorize or knowingly permit that person to ride on or

operate a bicycle without wearing a helmet, as required by subsection 104(1) of the Highway Traffic Act.”

She goes on to say that, “This clause thrusts the responsibility upon a parent or other specified individuals to ensure the safety of a child without imposing an absolute liability on such individuals.”

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The Vice-Chair: Do you want to put that forward as an exhibit?

Mrs Cunningham: Yes. I’m advised I should be putting this forward as an exhibit. We probably should have this copied, because there are two other issues covered. Does everybody have this?

Ms Anderson: Would you want me to include that suggested amendment in here?

Mrs Cunningham: Yes, under the “suggested action” part, because I think we’ve already started on our report, Mr Chairman. If we could consider this—

The Vice-Chair: What is it you’re doing?

Mrs Cunningham: The report. Under the “suggested action” part, the report would identify amending the legislation as the way to implement the recommended coverage. “Please see attached response number 1 in the letter of May 20 from the Ministry of the Solicitor General in this regard.” We could put it right in there.

Ms Anderson: I can just add it in.

Mrs Cunningham: Sure. Just add it in.

The Vice-Chair: Thank you, Mrs Cunningham. Any other discussion on who would be covered? If not, I guess we can move on to exemptions.

Mrs Cunningham: The question here is, should there be any exemptions? We’ve never had a discussion about this. We’ve had two examples. One is the example as printed here with regard to the religious exemption. I guess there are three: for medical reasons, out-of-province tourists, or costs. I’m not aware of legislation where there are any of these exemptions, or do we even want to flag them? There are persons with more experience here today than me. I’m wondering if we should start with no exemptions and see what happens. We’re trying to make this as broad-based as possible. The general policy on exemptions, as printed in this report, is to start with none and then evaluate each request for exemption as it arises. I guess we could have some discussion on that, Mr Chairman.

The Vice-Chair: Is there any further discussion on the exemption issue?

Mr Turnbull: I’m looking for guidance, and this may be as a result of the fact that I haven’t been sitting on these hearings. Do Sikhs currently have to wear motor bike helmets?

The Vice-Chair: Maybe we should look to—and please, if you’re going to speak, could you come to the mike?

Mr George Dadamo (Windsor-Sandwich): That’s David Edgar, by the way.

Mrs Cunningham: I would suggest that you both come up to the mikes, because maybe you can help us with

this as you were a part of the authorship. My understanding is that there is no exemption now under the present legislation.

Miss Andrea Strathdee: No, but when you introduce it the first time—we had a few phone calls from Sikhs. We had two who were upset, and I think they made reference to England. I’m not sure, and maybe you know a bit more, but I thought they said that in England they were exempted from wearing helmets. I might be wrong. We haven’t had anybody call us this time around, but the first time we had two phone calls from Sikhs who were upset.

Mr Paul Klopp (Huron): I think it was brought up too at the hearings. Somebody made a comment about this: What about these situations? What I’d like to know is, should there be a general policy of no exemptions and then go from there, what is that process? Is that something where we don’t need to have a committee and have legislation, that it goes just by regulation or something? I’d like to know that process.

Mr Turnbull: Perhaps I can help. If we knew whether the Highway Traffic Act currently required motor bike helmets with no exemptions, it would guide us in this legislation, and then there would be some consistency in what we’re doing here.

Mr Klopp: I still would like to know the procedure we would follow with this and how it would work. Next month do we have this in place and then all of a sudden groups come forward? Does the Ministry of Transportation arbitrarily listen to the lobby and then change it, or does it have to go to a committee? What is that process?

The Vice-Chair: I believe what we are doing here is indeed making recommendations to the various ministries. If we flag something and we don’t have the answer, I believe we can put the query to them so that they can get the answer for us.

Mr Turnbull: It would be my recommendation then that however the bill should be drafted, it should be consistent with the wearing of motorbike helmets. Then you don’t have any conflict from one law to another.

Mr Dadamo: In an area such as exemptions, an area such as penalty enforcement, should we not have some legal advice?

Mrs Cunningham: We’ll say that when we pass it on.

Mr Dadamo: And at some point we will flag and we’ll send these areas off to the legal—

Mrs Cunningham: We’re going to do that now.

Mr Dadamo: Okay.

Mrs Cunningham: Throughout this report, I think we should raise some issues that we have not been concerned about. The first one that has been raised is the issue of the exemption for religious reasons. Mr Turnbull has said, “Let’s ask if in fact we’re being consistent by a general policy on exemptions with the present legislation for motorbike helmets.” My view there is, since we haven’t had any challenges with that as far as I’m concerned or to the best of my knowledge, that’s up to the administration within this multiministerial committee to advise us.

What we're expecting now is that when we send our report to them for their best advice, they will answer these kinds of questions. The first question is, what should we do to be consistent, I suppose, or are they aware of exemptions in the Highway Traffic Act that we ought to know about? I'm not aware of any, having read it in preparation for this bill, but they're the experts who should be advising us.

So the suggested action here on exemptions would be then the report could identify that regulation-making authority for exemptions be specified in the bill. That in fact is what we're doing, if in fact we have an exemption policy for the motorbike helmets.

The Vice-Chair: Mr Edgar, I believe you have a comment.

Mr David Edgar: Currently there is no exemption provided for Sikhs under the Highway Traffic Act not to wear helmets. If you make a recommendation that gives flexibility to the minister to review those who come forward asking for exemptions, that would probably be a prudent decision. The Sikhs have done that and the Ministry of Transportation currently is looking at that review for the exemption for Sikhs.

Mrs Cunningham: Okay.

Ms Sharon Murdock (Sudbury): There is an exemption under the health and safety regulations of the Ministry of Labour on religious grounds not to wear safety hats on work sites.

The Vice-Chair: Hansard can't hear you. Okay, he says he can record it. Carry on.

Ms Murdock: Did you hear what I said?

The Vice-Chair: No, we couldn't hear, but he could.

Ms Murdock: Under the health and safety regulations of the Ministry of Labour, there is an exemption for the wearing of safety helmets on work sites. I don't know whether or not that would carry over into the HTA or not, but there are already precedents set.

Mr Turnbull: What happens when somebody does not wear his safety helmet, say for religious reasons, and he's injured on the job? I would hope there wouldn't be any extra liability implied to the employer because, of his own volition, the person has not worn his helmet.

1620

The Vice-Chair: I would ask Mr Turnbull and Ms Murdock, I know we're trying to relate one to the other, but I really don't want to discuss compensation and whether you're eligible or not today. But I think it is something we should have an opinion come back to us on. Here I am taking licence with the Chair, but—

Ms Murdock: If I may, it makes sense that the recommendation made to have something—and we can have legal counsel advise us on whether or not direction could be given to the minister—you know, something could be stated in the law we end up with, the actual bill, that says the discretion lies with the minister or something like that. I think that makes inordinate good sense.

Mrs Cunningham: Ms Anderson has advised me that she's going to put these issues as part of the report for

consideration by the different ministries, but in that regard we don't have a precedent with the Ministry of Transportation but we do with the Ministry of Labour and we can point that out.

Ms Anderson: I just want to make sure the committee feels that in general there should be no exemptions but that any there are should come forward to the minister for his review. That's the decision the committee would like to put forward to this interministerial committee.

Mrs Cunningham: Could we have a short discussion, because we never had the opportunity really, on the out-of-province tourists as exemptions? We've never really discussed it, have we?

Mr Dalton McGuinty (Ottawa South): I'll react to that just off the cuff. I guess the immediate problem I perceive is, how are the police going to distinguish between tourists on bicycles and residents of Ontario?

Also I think just as a kind of a policy thing, if we're going to go ahead with this, the underlying reasoning is that we'll try to protect people against injuries. What we're going to do is we'll discriminate between those who live here and those who visit us. If you're coming to visit us, then we don't mind if you injure yourself, and if you live here, then we're very concerned about that kind of thing.

Even if you look at the economic impacts of this too, if someone is visiting here and injures himself, I'm not sure how it works under OHIP. Do we end up paying for that? That certainly adds an implication as well.

Mr Klopp: I think I agree with Dalton here. Let's go with no exemptions and see what they come back with, because out-of-province—I believe if we're consistent with the Highway Traffic Act with regard to motor vehicles, I don't recall that you can be from Manitoba or from heaven knows where and get on a bike and: "Oh, didn't have my helmet. Excuse me. I didn't know." It's not a big issue with me anyway.

Ms Murdock: I agree that there shouldn't be any exemptions, for two reasons. One, we are intending to have an education program, and there can be signs such as we stated a couple of days ago, as they have for seatbelts, coming in from the border areas stating that a bicycle helmet is a law in the province of Ontario and therefore if you're riding a bicycle you must be wearing one.

Second, I think when you're visiting anywhere you are bound by the law of the area in which you're in. I used the example, when we spoke of this before, of cars going to the state of Florida right now. You are not allowed under Florida state law to have tinted windows. So if you are driving your car here that has tinted windows, you will get ticketed in Florida, and they don't care if you're an Ontario tourist or not. I think the same should apply here.

Mr Len Wood (Cochrane North): I take a little bit different approach towards that. I think if you have a half a million tourists coming into Ontario, you're going to have an advertising campaign or publicity over a period of three, four or five years, because I know when I was camping I had a car and a truck and a 17-foot trailer and you put the bikes in or you strap them on the back and you're gone for a month and you're going through a lot of

different areas. I know when the children were small, I wouldn't have wanted to end up paying four fines of \$78 each, because I'm only going to be in the province for one day and the government is making money off me. That's going to be a concern.

Ms Murdock: It'll be an increase for our economy, because they'll have to go out and buy four helmets.

The Vice-Chair: Indeed. I continually take licence with the position of the Chair on this topic, because we're all friendly, but I would hope the constable that was there would at least give the tourist a warning.

Mr Wood: You would hope.

The Vice-Chair: I would hope.

Mr McGuinty: Just to approach it from the other angle too, I think we've got to look at the impact it would have on tourism. It would be interesting if there'd be some way we could find out how much of a factor that is to someone. If I'm living in New York state and I hear they've got mandatory helmet legislation in effect in Ontario, does that really make any difference to me? I don't know the answer. I think that's a question we should—

Mr Klopp: Come on. I doubt it.

Ms Murdock: But the other thing too is that part of the education process is going to be providing information to tourist bureaus, to travel agencies. All the money that is spent by this province in all the states trying to attract tourist dollars and tourists, period, into this province, part of that is to make sure the dissemination of the information includes that if you're riding a bicycle in Ontario, you're required to wear a helmet.

The Vice-Chair: Could we say, in order to move along on the issues, that while we're flagging the possibility of a problem with an ethnic community, we believe there shouldn't be exemptions but that we would like them to look at tourism. I believe there's the experience of Maryland, which already has the law. So is there a negative effect on tourism? We could ask that question of them or just go ahead.

Mr Klopp: The way I understand how this process will be is that we're kind of saying, what do you want them to discuss, and they will come back. If we say, "We've got no problems with it if it's out of province or not out of province," and if Tourism and Recreation comes back and bloody well tells us, "You know, really you don't do that," we'll have that discussion then. But right now none of us are against the idea of them looking at it. That's the way I'm taking this meeting today.

Mrs Cunningham: I agree we have to have a position here, and the position is obviously that we don't want tourists to be exempted. I think everybody said that and I think the Chairman is advising us that if somebody within a ministry has a real problem, like the Minister of Tourism and Recreation, who says, "You're going to turn away 500 tourists," or something, then we want to hear about it. But we have to have a position and our position would be that there be no exemptions right now, I think, having heard from everybody on that one.

Ms Murdock: I think that we state in our report that we have considered tourists or out-of-province visitors and

that part of our consideration is the education program and the delivering of information to the tourist bureaus.

The Vice-Chair: Any further discussion on number two, "Exemptions"?

Mr Klopp: I apologize. I haven't been at every meeting lately, but am I referring back to some ideas we were having about costs?

The Vice-Chair: Affordability.

Mr Klopp: Affordability. We're going to do that later. Thank you.

Mrs Cunningham: Does everybody have this document? Because it's so easy to follow.

The Vice-Chair: Yes. Any further discussion now on "Exemptions"? We're all in agreement? Okay. Where is the next one? "The current legislation is quite comprehensive but does not include areas such as school yards and parks."

Mrs Cunningham: On that point, we had a lengthy discussion here on this on Monday, and although many of us came in with the idea that we could add the park or whatever, I think the suggested action pretty well tells us what the bottom line for it was at the end of probably over an hour of discussion when we had the privilege of having the Minister of Transportation's representation here and the suggested action that no change be identified in the report.

I think the bottom line really was that the issue here is to encourage people to comply with the wearing of helmets to protect their heads, and that we had hoped that although we don't say "bicycle path," we understand that to get to the bicycle path the individual will put the helmet on. We hope they won't take it off on the bicycle path and then come out at the other end and put it on again, and that we ought to just leave it the way it is, and if there are problems that they will be brought to our attention as the legislation is reviewed or as part of the public education program before it's implemented.

The Vice-Chair: Any other discussion?

1630

Mr Dadamo: I would hope that we're not advertising that school yards and parks are exempt and would be safe places to go to ride without a helmet, because accidents can occur there too. Are we going to advertise that those are the places you couldn't do it?

Mrs Cunningham: I think the understanding we had there was that although the school yard won't be specified, school boards, we hope, will be making policies, or the students themselves will have their own little rules. One of the rules I would expect they would talk about these days is to keep within the confines of the law, so when the public education program is out there, we're really going to count on the education system to carry a major part of it for us.

My view would be that schools will probably say, "If you don't have a helmet, and it's the law that you have a helmet, we don't want you to bring your bike to school," just like they used to say, in fact and without its being law: "We're spending far too much time with the enforcement agencies right now and your parents are far too annoyed with us because bicycles are stolen from the stands. If you

can't lock your bike, we don't want it on the school grounds." Custodians and staff members patrol on a daily basis to say, "Take your bike home," because nobody wants the responsibility and the time involved to deal with it.

The Vice-Chair: Any other comments? Hearing none, we will accept it that no change is identified in the report. "Penalty" is the next topic. Discussion? Mr Klopp.

Mr Klopp: I find that somewhat high, but I'm open to hear discussion.

Ms Murdock: We discussed this on Monday as well and I think the point that was made—that is, \$75 plus the court costs is what a vehicle, a car is charged for failing to stop at a red light or whatever—

Mrs Cunningham: Or yield.

Ms Murdock: No seatbelt.

Interjection: No, it's higher.

Ms Murdock: In any case, those are the prices for those vehicles. A bicycle is considered a vehicle under the Highway Traffic Act and we want to ensure that people understand that we think this is as important as it is in driving a car. That point was made very clearly on Monday, and therefore my own personal view is that it should be the same as it is for any vehicular traffic.

Mr Klopp: Is this for people over 16? That was my only other question.

Ms Murdock: Under.

The Vice-Chair: It's my understanding that it includes everyone. In other words, if you have a six-year-old out on the street, the fine that child would receive would be \$75 plus court costs.

Mrs Cunningham: Paul, I thought you'd be interested in that.

The Vice-Chair: Any other discussion?

Mr Klopp: I'm not totally opposed to it. I just wanted to hear for myself.

The Vice-Chair: Okay. So everybody's happy with that?

Mr McGuinty: I'm not 100% happy. I guess I have mixed feelings about it. I understand the point; that's a good point. The penalty, I think, should bear some relationship to what it is you're driving: \$75 versus the cost of the car, and \$75, which is the cost of, I suppose, a helmet. I'm just thinking it may be a little on the high side, that's all—I'm not feeling overly strong about that—especially when a child may be involved in committing the offence. These are primarily directed at adults.

Mr Wood: What's it cost you for a five-year-old kid in the back seat of the car with no seatbelt on?

The Vice-Chair: Just one at a time, please.

Mr McGuinty: Just to get it on the record, Len asked, what does it cost for a five-year-old kid in the back seat of a car? That's a good point, except when children are on bikes, they often are on their own and not within the supervision of adults. If I have a child who as soon as she goes around the corner removes a helmet from her head, then there may be a couple of warnings, but after that the police are going to say: "Listen, we picked him or her up three

times. Now we're going to bill you for it." I don't know whether it's maybe too high.

Mr Turnbull: Surely the thrust of this legislation is twofold: one, most importantly, to protect the children—in fact, not just children but anybody who rides a bicycle—from head injuries, and second, an offshoot of that, to protect society from the associated health costs which can be quite as high as for somebody involved in an auto accident. We must make sure this is taken seriously enough so that parents are going to have a great deal of pressure on the kids to keep it on. If we make it just a piddling fine it's not going to have the same validity.

Mrs Cunningham: Can I give the committee some information? Do you recall we talked about having some guidelines for the enforcement agents? I thought you might be interested in a couple. One is the state law of New Jersey that came into effect on January 18, 1992, and we could refer either one of these two—I'm raising these two examples because I think they're the ones we talked about most.

I will just read this one. It is for children because I think adults should just be charged, but for a person under 14 years of age, this would apply to the person under 14:

"A person who violates a requirement of this act shall be warned of the violation by the enforcing official. The parent or legal guardian of that person also may be fined a maximum of \$25 for the person's first offence and a maximum of \$100 for a subsequent offence if it can be shown that the parent or guardian failed to exercise reasonable supervision or control over the person's conduct."

I am suggesting this as a guideline. I've never heard of this before. "Penalties provided in this section for a failure to wear a helmet may be waived if an offender or his parent or legal guardian presents suitable proof that an approved helmet was owned at the time of the violation or has been purchased since the violation occurred."

That's something we should at least ask the committee we're referring this to look at, but that would be part of—now, I have to keep in mind that we're not taking the advice of the solicitor who appeared before our committee if we do that because right now we're recommending—will you go back to page 1 of that letter? We're saying it is illegal to authorize a person under 16 to ride this bicycle without wearing a helmet. I think that might mean—and this could be a question—that the parents pay if the child is fined. We know the child would be over 12, isn't it? I don't know why they put under 16 here because that's in conflict with the Provincial Offences Act, isn't it?

Mr Chairman, I think we should point out that we have a problem with the age 16 there. We'll be referring it but with that question because the—

The Vice-Chair: Because it doesn't fall—

Mrs Cunningham: No, it doesn't fall within what we were told the other day. We would only need that for children under age 12 and they've raised it to 16.

That was the state of New Jersey. The other one I thought you might want to talk about, which is now "less than 16 years of age," is Howard county in the state of Maryland. "Any person less than 16 years of age"—in our

case I guess we'd be saying 12 or, I don't know, 16, depending on what we get back—"operating or riding on a bicycle on a public roadway"—and they decide this whole thing—"under the jurisdiction and control of the county shall wear a protective helmet designed for bicycle safety," and it mentions the standards there.

It says: "A first offence violation of any of the provisions of this subtitle shall constitute a class E offence"—and we have the class offences—"and upon a second offence violation of this subtitle within 12 months, shall constitute a class D offence. (a) Class E offence: Penalties range from \$25 to \$50. (b) Class D offence: Penalties range from \$50 to \$100.

"The court may waive any fine for which a person found guilty of violating the provisions of section"—it goes on—"with proof that between the date of violation and the court appearance date for such violation, the person purchased a helmet which meets the requirements...."

So there you go. These are suggestions, but I don't know how you do that without writing it into law. Could we have maybe some advice from one of the members who may know something about that?

1640

The Vice-Chair: Mr Wood, do you have a comment?

Mr Wood: Yes, just a comment: Without changing the amount or spelling out any specific amount other than what is in there, \$75 or \$78.50, you could put a sentence in there saying that the judge or the justice of the peace or whatever would have the right to waive the fine. That would be the maximum penalty he could set. You could put something in there. Without spelling out \$25 for the first offence, \$50 and up to \$100, you could just say that the judge, after meeting with the parents and the person involved, would have the right to waive the fine; something to that effect.

Mrs Cunningham: In my view we want the police officer to have some latitude in the enforcement, and we would hope the police officer isn't going to give a child a ticket for \$78.75. If they do enough of that, we will be challenged as legislators for making a law that isn't fair, and that's my problem.

Mr McGuinty: I'm not sure whether it's more than a practice and it's actually written into law, but at the present time, if you're driving along without your licence, ownership and insurance, many police will just say, "Listen, you've got 24 hours to show up at the station and provide us with evidence you in fact have it." Why could they not say, "You've got 24 hours to show up at the station with a helmet," just as a practice?

Mrs Cunningham: Could we suggest that? Now, that isn't the law, is it? That's the practice. Well, we'll ask. Is this example of showing up at the station with your driver's licence a law or a practice? My view is that it's probably a practice.

Ms Murdock: It is a practice.

Mrs Cunningham: In fact could we, when we pass this law, extend this suggestion to the enforcement agencies? Surely there's nothing in writing that says you should do

that from the provincial legislation, but obviously the enforcement agencies have taken it upon themselves to show some common sense.

Mr Klopp: But why can't we put that, under 16 or 12 or something, that is the rule? We're not talking about—you know, a driver's licence is a driver's licence, and you probably won't get any police officer to ever say, "No, we allow that," I bet. Because it's common sense—we don't push certain things—but why couldn't we, say, allow that under 14 or something, they can come and show up with a helmet the first time or something?

Ms Murdock: The thing is that our intent, from all the discussions we've had, is that it's not going to be proclaimed pending the period of time we decide is going to be an education process and an introductory period in which people get used to the idea. Until it's proclaimed, you're not going to be charged anyway, because it does not become law until it's signed by the Lieutenant Governor. Therefore, say we pick 18 months, hypothetically here, as the education lead-in. You're going to have 18 months of warnings before the law hits. Then once that law hits, I think it's discretionary, as it is for having your driver's licence with you. The officer is going to make that determination.

Unfortunately what Len is suggesting couldn't be done, I don't think, in terms of the court system and the provincial offences court particularly. I used to prosecute in there and I know it's extremely busy. You would never be able to have the time for the judge to sit down with the parents and the child and explain all of this, as much as we would like that to happen.

The other thing is that I don't know how you would be able to do it once it becomes law; an officer stopping a child and knowing somehow or other, by genie, that it is your first or second or third offence. There's no record-keeping. How are you going to know? Depending on the child, he or she is going to tell you it's his first time or he's never been stopped before.

I think too, if you're going to require that you give him a chance to show up from the date of the ticket, if he shows up at the court he has to show up with a bill of sale, not just a "borrowed" helmet. I use the word "borrowed" in quotation marks.

Mrs Cunningham: This is a lady of experience here.

Ms Murdock: Yes. Therefore, I would say that has to be stated.

The Vice-Chair: Any other discussion on this?

Mr Leo Jordan (Lanark-Renfrew): I was just thinking that we seem to be dwelling on methods of enforcement.

Mrs Cunningham: Yes, that's the part we're at now.

Mr Jordan: Really, if we make it a requirement in law that a helmet be worn, the method of enforcement will surely come from the people who have that responsibility. Do you see it as this committee's responsibility to lay out how the law would be enforced?

Mrs Cunningham: In response to Mr Jordan, I think we should take a look at the issues, both penalty and enforcement, as they read right now, because I think he's just said it; I think he summed up without knowing it. "The current

penalty for all offences is \$75 plus court costs, or \$78.75. Is this appropriate in this case?" My view is that we've all said yes. "Suggested action: The report should identify that any changes be specified in the legislation." We're not recommending any.

If we go on to the enforcement part, I think it will sum up. "How will the legislation be enforced? The police are required to enforce all provincial law and would have to enforce this bill if it became law. However, the policy to waive a first offence or to phase in enforcement is at the discretion of the police. The committee could comment on bicycle helmet enforcement methods used by other police forces," which we have done, the two I've just read into the record. The suggested action, that the enforcement and our concerns be part of a discussion in the report, is probably the best we're going to do. I think you're quite right: Is it the responsibility of this committee?

Mr Jordan: I don't think so.

Mrs Cunningham: Would somebody laugh at us if we suggested guidelines? Probably.

Ms Murdock: I just have one other addition, based on the letter from the Ministry of the Solicitor General on the second page, "Can provincial offences officers be authorized under the HTA to enforce the legislation?" I'm wondering whether we should also consider the possibility of bylaw officers in the municipality having the power to enforce bicycle legislation. It's just a thought. I know we haven't discussed this, at least when I've been in the committee, but it is another concern because under this, according to number 3 on page 2 of the letter from the Solicitor General, only police officers have the right to ticket.

The Vice-Chair: That was going to be my question of Mr Edgar. At this point, all bylaw officers can do is parking tickets, right?

Mr Edgar: I wouldn't hazard a guess on the practices of municipal enforcement officers. I'm sorry; I'm not an expert on that.

Mr Jordan: I believe the municipality can apply to the Attorney General's office for the right to have the bylaw enforcement officers issue certain summonses for certain happenings relative to the municipality that are normally done by the OPP but do not necessarily have to be done by them. There's some broad brush there for some areas. I'm not sure what they are, but I know in my municipality we did apply for the parking tickets for winter parking. The bylaw enforcement officer does that. He does it for speeding over 30 miles in built-up areas. He does it for three or four different things that used to be completely under the Police Act or under the Ministry of Transportation or whatever. They have delegated some authority, if the municipal council makes application to the Attorney General's office. That's my understanding.

I was thinking of some of the paths for bikes in our municipality where the OPP will never see the offence of not having a helmet. I think there has to be cooperation on this thing. The National Capital Commission in Ottawa—a lot of biking there.

1650

Mr McGuinty: I'd be concerned, Leo, about what a municipality would say if we said we were going to charge them with the responsibility and costs for enforcing another law we've dreamt up down here at Queen's Park. That's my concern, is the financial aspect of it. There's something developing in Ottawa, which is in larger urban centres now: police bike patrols.

Ms Murdock: Sudbury too.

Mr McGuinty: Sudbury as well, yes. That's a large urban area. They are serving a great purpose: get off a beaten track, go down the bike pass from time to time as well. So it's not completely out of the question that we can look to reasonable enforcement by municipal police forces or the OPP.

Mr Jordan: As to cost, I'm thinking of a bylaw enforcement officer in our municipality who gets \$27,000 a year as compared to an OPP officer on his bicycle at double the rate. We're going to have to look at the economics of this. The Ontario Building Code is still delegated to the chief building official in the municipality to enforce, even though it's an Ontario law. It's acceptable to the municipality, but I know what you're saying, that we make the law and then make the municipality pay the cost and staff.

Mr Klopp: I'm getting a little confused. We asked where. The current legislation doesn't include school yards or parks, so we thought we would just leave the present legislation: roads. But the town of Exeter, for example, has its own police force. The OPP is outside of town and the Exeter police department is in town, but don't they have to follow the same Highway Traffic Act rules, like 30 miles an hour or seatbelts? So they're going to follow the rule for this helmet law, and the same for a small municipality that doesn't have a police force. If the OPP drives through and they see somebody biking without a helmet, they're going to enforce it. If it happens to be in a park, the cop I guess will decide, "Do I wait until they get out on the road and then charge them, or will I drive through town and get them next time?"

Mr Jordan: I don't think we can afford that.

Mr Klopp: I don't think the cops will either. Like we say, we're going to do this for maybe two years or something and advertise the heck out of it, so I guess we have to keep that in mind too.

The Vice-Chair: Any further discussion?

Mr Klopp: Getting back to enforcement, I had two things. On page 2, they ask the question, can the police take the bikes away? I don't see anywhere in here where we mention seizing bikes. I just wondered about that. We did ask the Solicitor General about the seizure of bikes. I'm not really that crazy about 2 and 3, about them taking bikes. Personally, I think it's highly unnecessary.

The Vice-Chair: I'm concerned that we're getting all bound up trying to get very technical. If we have a recommendation on enforcement, that we want them to be lax with the first offence of a child or whatever, then we can make that recommendation, but to try to get into all the legalities—I think we should leave that up to the lawyers. I

would make that suggestion. If you wish that we should have some leniency on first offenders, especially the juveniles, then I suggest you bring that forward and that we leave the rest to the people who do the legal part for a living.

Ms Murdock: I have one point, though. I know I asked the question about who enforces. I have another issue that I think goes to enforcement, but I'm not sure. It's based on Mr McGuinty's statement that there is no requirement, in order for you to ride a bicycle, to have a licence. I think you should have. If it's considered a vehicle under the act, I think it should be totally considered a vehicle under the act. Therefore, if you want to ride a bicycle on the roadways of Ontario you should be required to be licensed. We do not address this anywhere in this.

Mr Klopp: You're the lawyer.

Ms Murdock: But we don't address this anywhere seriously. We have discussed this in this committee at length. It's not mentioned in any of these pages either.

Mr Klopp: We're talking about helmets.

Ms Murdock: We are.

Mrs Cunningham: I would just respond in that regard that it is not part of this act to amend the Highway Traffic Act; it would be another piece of legislation. We could put it in the report as a concern, to get a response back. We can ask Ms Anderson to do that. I think that would be appropriate at this time.

If I could sum up on enforcement: that the police are required to enforce all provincial laws, which means the \$78.75 fine; that the committee has commented on bicycle helmet enforcement methods used by other police forces and those two examples can be attached to our report, that is, Howard county in the state of Maryland and the state of New Jersey; and that we would expect a reply from the joint committee with regard to guidelines to be sent along with this legislation to the enforcement officers.

That's my conclusion from what we've talked about, so we will get a response on whose responsibility it would be to make certain that people are licensed. It's my view that it has been the municipalities' response in the past. They have licensed bicycles—not bicycle drivers but bicycles—in the past. They themselves have decided to throw it out as part of their bylaws over the years because it's become expensive and their police forces have complained about the time it takes; that's probably what they're going to come back and say to us. But we can have another kick at that can; we are going to meet on this.

Ms Anderson: Can I just get some clarification quickly on what, if anything, you want to put in about the bylaw officers helping to enforce the act? There was a certain amount of discussion about that, and I didn't hear a conclusion. Do you want to not put any—

Ms Murdock: That was just me. I don't know if anybody agrees with me.

Ms Anderson: Do you want to just leave it the way it is, without any discussion of that?

Mr Jordan: I realize that has come up at the meetings, but either certain areas are going to have to be

brought under the Highway Traffic Act or they're going to have to be enforced by the municipality.

Mr Klopp: Didn't we clarify that under "Where," that we're just going to leave it on roads? Then we don't need to get into the school yards and into the parks. If we go into the parks, you're right, we have to do something.

The Vice-Chair: For your information, Mr Jordan, while you were out, they indeed agreed that under the title "Where" we would deal strictly with roads. Then coming out of Monday's meeting there was much discussion, and they assumed that people, once they got used to riding with helmets on the roads, when they hit the park or whatever wouldn't take their helmets off for a five-minute trip through a park. Any further discussion?

Okay, how be we move on to the date on which to come into force? We're on dates.

1700

Mrs Cunningham: The date this should come into force—I have been thinking a lot about this. As the bill reads right now, you'll see that it says, "This act shall come into force on the day it receives royal assent." That would be the day it gets third reading. I don't think we can live with that—because it could be even before the House rises—if we want to make a statement. Maybe it will be just before the House rises next Christmas, but it's going to be one or the other, in my view, after all the hard work we've done, and I think that would be too soon for it to come into effect.

If we say "on proclamation," that would mean it would get royal assent and that it would be left on the minister's desk to bring it forward when we ask the minister to bring it forward. Depending on what's happening at that point in time, depending on how many people get to the minister or whatever after all our hard work, he may choose not to bring it forward when we want it—meaning this committee—or for any reason. It could just die because somebody forgot about it. My view is to put in a specific date and live with it, which means each of us would have to live with the date we choose. I feel this is going to be a very important decision for us.

My understanding is that there are certain ministries that want this to happen very quickly. They don't want to sit back. To be blunt about it, the Minister of Health apparently has said that this would be an important thing to accomplish. I'm not quoting anybody; I'm just talking about what has been brought to my attention. Two years would be too long.

When the Ministry of Transportation has been before the committee, I think it said three years; some days it says two years.

Ms Murdock: Two years.

Mrs Cunningham: By "they" I'm not pinpointing anybody. I just think it probably makes good sense to get some money behind the public education thing, which I think we're tremendously committed to. I think some of us will be at a personal level, meaning we will ask our Kiwanis clubs and we will ask our school boards to put forth what they can, and some of us will try to raise independent dollars to help with the public education. I've certainly

committed myself to that, but we're talking about a lot of money here. We're talking about as much as \$500,000, maybe more, depending on how long we're talking about.

I've been thinking about it. My first thought was that a year this spring would be the ideal time. I thought of spring because that's the time when everybody brings out the new bikes and when you start talking about bicycle safety; then I thought that two years this spring is too long. We're into the fourth year of this government's tenure, and we're also into probably the beginning—let's hope there's been lots of public education—but we're into probably some disagreements with individuals around having to buy a helmet. This is for real and all of a sudden they have to buy a helmet.

I thought the sawoff would be a good one and I think there are reasons why Howard county chose October 1. This is my thinking, and I would say October 1, 1993. That would give parents and school systems and young people a couple of summers to live with the reality that they're going to have to have bicycle helmets, not this coming school year but the following school year.

When school resumes in September 1993 there will be time for the teachers to say: "Look, on October 1 this will be law, so if you're buying hockey skates or you're buying soccer balls or if you need a new swimsuit, you also need a bicycle helmet. Our home and school association has made these available for 20 bucks or something." That's my hope at that point in time.

That has been my thinking: that throughout the summer people will be reminded, "Haven't you got your helmet yet?" and then we can count on the schools to help us on October 1. I'm certainly very open as to any concern on this date, but with an election coming up, I think we have to think about the political ramifications too for anybody, even the year after that. The law will have been in effect for a whole year, and some of you will not be accused—I think things will be in place by then. That's my point.

The Vice-Chair: We'll just blame you.

Mrs Cunningham: You can blame me, but the fact of the matter is that it's an all-party committee, it's a very different way of doing things and all I can do is lose in my own riding. I've beaten the odds twice; this may be the big one. My point is that I think there are perhaps others who have more to lose with this than myself. I just raise it because people have brought it to my attention.

The Vice-Chair: It's open for discussion. Mr Klopp, Mr Wood, Mr Dadamo. It seems like everybody—

Mrs Cunningham: I think everybody should talk to this.

The Vice-Chair: Why don't we start with Mr Wood and go around the room.

Mrs Cunningham: Yes, and I want you to know I'm flexible.

Mr Wood: I have no problem with the suggestion Dianne has brought forward, because you're talking about 18 months, plus you're talking about a winter campaign of six months. Even though people would probably be buying their helmets right at the time that our provincial campaign

is going on, I think I could live with that, because it's actually 24 months that you're talking about from now to then.

Mrs Cunningham: Yes, 24 from now.

Mr Wood: Yes. I have no problem with that.

Mr Dadamo: If we in fact set this 18 months, hypothetically, can we give manufacturers some sort of direction? Will they be ready to manufacture helmets in time for this deadline? We're imposing a deadline on the manufacturers, for one. Are people realistically going to be in a mindset 18 months from now? Is that sufficient lead time? Have we talked about who will come to us with some sort of aspect of how much money we're going to have to put aside to run a campaign like this? How much money is it going to take to educate, to run through the schools, to go to the Rotary clubs, the Kinsmen clubs and whatever have you to tell people that this is coming in 18 months? Someone has to come back to us with money, a campaign, a time frame. I don't know. To me, it seems 18 months isn't long enough unless somebody can prove otherwise.

Interjection: Can you give us a date?

Mr Dadamo: I don't know whether it would be a September 1, an October 1 or a spring day. I don't know. We live with numbers constantly. We're living with demographics constantly. Somebody has to prove numbers or come to us with some sort of study to show us that the province will be ready in that 18 months. I don't think realistically we can meet that.

Mr Klopp: I guess I'd like to see—page 4—what we are looking at for helmet standards, all that stuff. Then, even when the committee comes back with the report, if we get everything else done, I think as a committee, the way we've been working, we can come up with a number and live with it, but right now, to say 18 months is just too hard for me. For one, I'm not worried about an election year if I get all the other stuff and it just happens it ties in with the coming election year, albeit it's easy for me to say that now. I think we should leave that date in limbo now. Let's get all the other ducks lined up. Let's see how this report comes back, because what if they don't show up to us till the end of August or some silly thing like that because things just weren't working out? Then we're looking at that date and going, "Oh, now we've all got to lose face and say we've made the wrong date on ourselves." That might be more pressure on us.

1710

Ms Murdock: I'm somewhat in the same boat. We could sit and pick a date today, but the reality of this, based on how committees work, is that I think it's probably more realistic to go 18 months from the date of clause-by-clause, because the education program can't even be set up unless it's based on the information within the clauses of the legislation, if you know what I mean.

The Vice-Chair: Every time you go to speak, the bell rings.

Ms Murdock: I know. It has something against me.

Mrs Cunningham: It's calling you, Sharon.

Ms Murdock: It's calling me.

Anyway, you can't devise an education program and the pamphlets and literature that are going to be required based on something we have been talking about but we haven't passed in clause-by-clause, so I think a date's going to have to be set from then. We can set a date now, but the reality is, it's not going to be that date. We know that based on our experience and this entire system that is set up in the Legislative Assembly. From the front page of what you prepared for us, it says in number 2, "The committee should recommend that an interministerial committee develop a single response, to be returned to the committee by a specified time, such as the fall," so we're not even going to get some of our answers back until the fall.

I'm not even looking at whether it's an election year or not. I'm just trying to look at this and be as realistic as possible, and I don't think we can, in truth, put a date down today without knowing what each of the clauses is going to say in the legislation that comes before us.

The Vice-Chair: I know Mrs Cunningham is chomping at the bit here, but I think we'll ask Mr McGuinty if he has any comments.

Mr McGuinty: I agree substantially with what Sharon has said. I think the only realistic thing to do is to get input as to how long it's going to take to implement these education programs and to dedicate the necessary funding and all those kinds of things that have to be done in order to implement legislation.

The only way to realistically do that is to say, "Listen, it's going to come into effect X months or X years after final passage," rather than trying from this vantage point to specify a certain date. Who knows what can happen to this thing between now and third reading? We don't know when the interministerial committee will report back to us. If, at the time, we are considering another bill—we're not sure when we're going to get to this thing on this committee. There are all kinds of possible roadblocks.

Mrs Cunningham: I've certainly thought about everything the rest of you have said, but this is my view. After the work we've done and the report we're going to send the interministerial committee, if we have gone through this thing line by line and issue by issue, the way we have, based on the information basically that they've given us already—right? If you take a look at this act, we really haven't changed anything. To be very specific, we haven't done anything.

We've thought a lot and we've certainly got the best information. The first part, "bicycle," we all agree with. We're going to go along with what they recommend on "who." My view is that they are going to say everybody, perhaps with the guardians being responsible for children under the age of either 16 or 12 in the one clause. That's the only issue there.

"Exemptions": I really can't imagine them coming back and telling us, after what we've told them, that we should make exemptions, but they might. If they do, we probably will.

"Where": They're the ones who told us not to change the legislation, so I can't imagine that being changed.

"Penalty": They're the ones who told us \$78.75, so I can't imagine them telling us to change that. I'm just being practical here.

"Enforcement": How will it be enforced? We have no choice on that except to try and get that guideline out to the enforcement officers.

Have I said anything that has surprised anybody? The only thing left is the date.

Ms Murdock: I wish it was that easy, Dianne.

Mrs Cunningham: But it's up to us to set the tone. That's my view. I feel we have to have the political courage to set a date, period, and I think it's got to be within the term of office of this government. Right? If we send them the date and they then say, "But it's going to take us two years to get these education policies out," or, for whatever reason, they think it's too soon, I think it's up to them to tell us that. I certainly think, if we've been specific in every other regard, we should be specific in the date.

What I do buy into right now, before we set the date, is that we do go through the last page, page 4, that Paul suggested, because this may in fact affect the date we set. I do think that's fair, because I thought his point was, "Will that give the manufacturers enough time, will that give the education enough time?" So if we go through this right now, maybe we'll be even better qualified to come to some agreement around some date, even if it's three years from now. That's my view anyway.

The Vice-Chair: Ms Murdock, do you have a comment?

Ms Murdock: Yes, I do. When I came down here and was stationed over at the Ministry of Labour, one of the things I was just flabbergasted by was the length of time it took to get a regulation through, and I sit on the cabinet committees on legislation and regulations. I was astounded because I would have thought that a simple change of a licensing fee—you're changing something from \$10 to \$15—would have been pretty easy to do. It would have just involved the minister saying, "I think we should change the fee," and it goes through a committee and it passes it and it goes to cabinet and, zap, it's done. Wrong; that's not the way it's done in government. It took four months from the date to get a licensing fee change to the time it came before our committee for a minor regulatory change. The realities of this life, as I've discovered in the last 19 months, are that nothing gets done quickly here. Nothing. I can't emphasize that enough.

The other reality is, as I said, regardless of how simple we think this is, if we were doing this with one ministry—I'm becoming a cynic in my middle age—I think it would still take a long time, even though we think this is quite simple. By sending it off to Transportation, Solicitor General, Health, Community and Social Services, Industry, Trade and Technology, Tourism and Recreation, Education, Consumer and Commercial Relations, Citizenship, Treasury and Management Board we are definitely going to have to impose a date by which they're going to have to come back and give us the answers to our report. Then we still have to get them to get clause-by-clause written up, even if it's only three or four. If we're asking all of those ministries

to do that, I can't even imagine the length of time it's going to take them to do that. Then we do clause-by-clause and then it's still going to have to go—Dianne, you know how committed I am to this.

Mrs Cunningham: I know.

Ms Murdock: So I'm just saying that we can sit here and make a date, but the reality of it is that it's not going to happen.

Mrs Cunningham: Could I reflect on that for a moment? Ms Murdock has just given us the realities of being in government. We're not sending it to separate ministries; there is already a committee together. They have travelled the province and so they do know, and many of them have followed the Hansards. We have already asked them at the end of today to report back to us in time for us to have a committee meeting in June. That's been our direction already. Again, I'm going to push the committee a little bit here and say, put a date in it and see what they think of it. We've asked them to come back in June and they may recommend a different date.

My view is, if we put in an early date, they'll recommend a later date. My second view is, if we put in a later date, they will recommend a later, later date. So I think we should bite the bullet around our ideal time and let them tell us what they think about it. They're the ones who have to tell us and come up with some creative way. The downside for me is simply—the public is not simple—a real challenge and that's them finding the money. That's all they've ever said to me—and you have to understand that I've spoken to most of these ministers—finding the money for the public education programs. In reality, we're not changing a regulation here. It is in our court how fast this moves. I do represent our party at House leaders. It's not that it has to go through the bureaucracy; it's with us.

1720

Ms Murdock: I'm sorry, but I—

Mrs Cunningham: Let's see what they say.

Ms Murdock: Okay. It will have to go through the bureaucracy, and legislative counsel can quickly tell you that it will have to go back. Even after it's all written up, it still has to go back over to the AG's office for approval of the language that's used in the province of Ontario's legislation. Then it has to come back to the lead ministry to determine whether or not it still says what you want it to say, and then it still has to be checked again by legislative counsel. Trust me on this.

Mrs Cunningham: I can only conclude from Sharon's experience that I have more luck in opposition than she does in government by going over every day.

Ms Murdock: It's amazing how long it takes to get something done.

Mrs Cunningham: I know. We should go through the other part now, because we don't have a lot of time, but I'd like to finish this today. I thought Paul made a very good point, and that was, how can we put in a date if it's going to be impacted upon by some discussion with regard to helmet standards?

The Vice-Chair: Hearing no disagreement, I will take it that we have agreement to move on and we will come back to the date at the end. The next is "Helmets Standards."

Mrs Cunningham: At the minute it's up to the Lieutenant Governor to establish the standards. In fact, to read it, "The Lieutenant Governor in Council may make regulations prescribing the standards and specifications of helmets referred to in subsection (1)." All we can do is advise this committee as to what we want in the regulations, and I feel very strongly that we should get into the regulations.

By the way, there was a reason for that, and that was that there wasn't any consensus at the time of that act around the standards. I feel there is now, but again we may have to send this in the form of, as it says here, suggested action, put it in the regulations, and what do we want, "ANSI, Snell, and/or CSA"? The recommendation we had from experts was the CSA, I felt. Does this constitute a trade barrier? Well, isn't our hope that it would? Strike that from the record, please. Should they be mandatory? Yes. And with regard to helmets for five-year-olds, if there isn't a CSA helmet for five-year-olds, we can't ask them to wear them.

Ms Murdock: We have to get MITT to have some manufacturers start making them.

Mrs Cunningham: Oh, we've had lots of response to this.

Ms Murdock: Yes.

Mrs Cunningham: I think "Suggested action: regulations" would be appropriate, and I think that committee is the one that tells us whether we should stay with the Lieutenant Governor, which leaves some flexibility, or really that our intent is that we write in "CSA-approved helmets."

Mr Dadamo: Are there companies within Ontario or Canada that already manufacture these types of helmets?

Mrs Cunningham: Yes.

Mr Dadamo: There are, right?

Mrs Cunningham: And there will be more, if there's some lead time; there's no doubt in my mind.

Mr Dadamo: So it would give us some options and some types and that sort of stuff.

Mrs Cunningham: Yes.

Mr Dadamo: Okay, that's good.

The Vice-Chair: I know it's taking licence, but I am probably one of the people who have actually worked with CSA closely because I worked in my past life under licensing, where if you lost a CSA licence, you lost the right to produce. I much prefer CSA for that particular reason. They inspect on a regular basis, and indeed, once you attain their licence, that isn't the end of CSA coming in. They do come in on a regular basis, and indeed all of the wire and the various other products that are made in this country that are CSA-approved are not considered a trade barrier, so I don't see that as a concern.

Ms Murdock: I could see it possibly being argued as a trade barrier if our tourists or our out-of-province people, say from the United States, ended up wearing an ANSI or a Snell and came into the province. I think there would

have to be some consideration that if they're wearing a helmet from their own—

Mrs Cunningham: That's approved.

Ms Murdock: —that's approved in their own state, it would be acceptable here. I don't know how you'd get around that, but obviously they're abiding by our law of wearing a helmet, and then we say, "Oh, but you can't wear a Snell, you've got to wear a CSA." I think we would have an argument on the trade barrier.

The Vice-Chair: Taking a little bit of licence with it, could we maybe indeed say that only CSA helmets will be approved for sale within the province?

Mrs Cunningham: I don't think we can do that.

Ms Murdock: We can't do that either.

The Vice-Chair: That's doing the same thing.

Mrs Cunningham: I know, but it's—

Mr Klopp: Let's not split hairs. Is a police officer going to go up to a guy or a woman or a child and check inside? Let's just leave it the way it is.

Ms Murdock: It becomes a liability issue actually should an accident occur. A lawyer would argue it would become a liability issue at that time. I doubt very much whether an officer would check to see whether you are wearing Snell or CSA or whatever, in truth. But the reality and the law would be that if it were in the books and if it were part of the regulations, it would be a requirement by law. It's just a thought. I don't know how you want to deal with that.

Mr Klopp: Would that be the recommendation then of the different ministries on that issue too, on all four?

Mrs Cunningham: They'll certainly let us know. I bet they'll come back and say, "You have to do this now," or their recommendation will be that.

Can I read some information into the record that I think you ought to know about, since Andrea does all this work and I get to read it. This is on standards. This is from Woolco. You know, you have to pick up the phone to get your information some days, and I am indebted to my staff for what they do.

A person at Woolco supports the legislation with a two-to-five-year phase-in period. I'm being up front with everything we get here. They sell Bell helmets which are CSA-approved and Bauer which are ANSI-approved. They do not have posters in their stores, although they have a video which they use when promoting safety, which I think it great. It doesn't really have anything else, I don't think, on this topic, except to say that the education must start with children in the schools. There's somebody who is telling us they sell the ANSI, which is Bauer. I thought Bauer was a Canadian company.

The Vice-Chair: I stand to be corrected, but I think it's part of the CCM empire.

Mrs Cunningham: Yes, you're probably right.

Standards—Bill Coffman: "There's been concern in the United States with motorcycle helmets that some weren't meeting the US standards even though they had the stickers on them. CSA helmets are tested from production line—

samples go to the labs for testing. American standards are currently being changed." I thought you'd like to hear that.

Ms Murdock: Was that not discussed by one of our presenters?

Mrs Cunningham: Yes.

The Vice-Chair: And that's indeed why the presenter and myself prefer CSA, because it's an ongoing test.

Ms Murdock: I'm not disputing it. I prefer CSA. I'm just saying that it is a possibility in terms of—

Mrs Cunningham: Canstar: "In 1991 they elected to back off in their bike helmet category to concentrate on other items. However, Mr Collins believes that if the law was passed they would re-examine their position and could easily meet the required demand, providing there is a phase-in period." He also believes helmet prices will come down as the demand increases. He was the Canstar person who suggested we contact people at Canadian Tire, Woolco and K mart. They must be big distributors.

Denrich: "Will need a two-year phase-in period. Their next few months are already booked with orders." This person doesn't believe the helmet cost will decrease.

Ms Murdock: What's the date of that letter?

Mrs Cunningham: All this is within the last month. We're just trying to get as much good information as we can to share with you.

My view is that they're saying in Ontario they do need two years to manufacture the helmets, which Mr Dadamo was saying, and I have every sympathy for that. That was one of our intents, wasn't it? If it were two years, my view is it would be two years this September. We might want to do that, which pushes it up even another year.

Getting back to the agenda—

The Vice-Chair: Yes. Looking at the helmet standards, they have basically give us four choices. There are four different ways of looking at it on that and I would like a consensus of the committee as to which one indeed we put forward in our recommendations.

1730

Mrs Cunningham: If we're going to have a longer phase-in period time than, say, two years—put the date at two years from this June or two years from October 1, which would be a year longer than I really want—then I think one of the reasons is because we want—we may be totally idealistic on this, but it certainly would give them time and they'd have no excuse. I think then we should be saying CSA. The longer the date, CSA. Again, the ministries may come back and say that wouldn't be their recommendation.

Mr Klopp: They're still going to have recommendations for safety standards, and I'm not going to argue; at least I won't.

Mrs Cunningham: No, but don't you think that's one of the reasons we were looking at it now? Because if we are going to go with CSA, we will obviously have to go a little bit longer on the implementation date. That's my view. What do you think, Dalton?

Mr McGuinty: I think it's important to remember that what we're talking about here is legislation that is fairly

intrusive. We're talking about people enjoying a recreational activity that's becoming more popular and we're now saying: "Listen, we're going to regulate this. Your kids cannot get on their bikes unless they have helmets on." I think we should recognize that. I don't know if you've raised this. I've raised it in a number of groups I've met, just to get some reaction and feedback on this kind of thing. In my next householder I'm going to have a little cutout section to get some more response on this. I think on the whole it's fairly intrusive.

Consider what we're saying now. We're also saying, "In addition to having to wear bicycle helmets, we're going to restrict your choice." We're taking it a step further. We're saying, "You can only buy this kind." Recognizing what this legislation is, I'm not sure we should go so far as to say, "We only want you to buy CSA." There's an impact on tourism. I think if we're going to have a law on the books, it's got to be something we're prepared to enforce.

Mrs Cunningham: I think the point the Chairman has just made is a very important one, something I learned about when we went to buy this helmet. I purchased some helmets a couple of years ago. These helmets subsequently have been CSA-approved because the manufacturer—it happened to be Snell—applied for CSA approval. If that's the case, I think Mr McGuinty has made a very important point. Maybe if the Snell could also be CSA-approved, that would open the door for us not having this discrimination around this trade barrier. You can't tell people, I think your point is, that they can't buy a helmet that is made in the United States unless it has—

The Vice-Chair: Indeed, Mr McGuinty, I was actually in the wire industry. Some of our wire was made in the United States and passed its approval stage, which was Underwriters, but they also had to have the CSA approval to be sold in this country.

So with helmets you can actually have Snell and CSA approval. The only difference between them in approvals is that CSA is the only one that does random line testing to make sure the product is of the same quality as the original helmet tested. In other words, their testing is ongoing. The other ones test once and that's it, or they might have an annual test, but virtually they test one group of helmets at the beginning and then never have to test them again. That's why I personally have a preference.

Mrs Cunningham: The two-year phase-in gives ANSI and Snell time to apply for CSA, doesn't it? So is the consensus CSA? What do you think, Dalton?

Mr McGuinty: I would just like some more information. Practically speaking, if it's not a great difficulty for a company to apply and obtain CSA approval, then I guess we're not overly concerned about making it CSA. But if we are going to discriminate against manufacturers, then we've got to be careful.

Mrs Cunningham: How do we handle this, then, for the purpose of the report? We want to give direction to the committee, which is CSA. We also want to ask: Would you advise us as to the difficulties if we stay with just one approval for the availability of helmets, and the cost perhaps of helmets?

Mr Klopp: That's fine.

Mrs Cunningham: Is that good? All right.

Ms Anderson: Could I just make a suggestion to maybe say "CSA or equivalent"? It might allow some of the other manufacturers who have the same sorts of standards—it would sort of open the door a bit more to something other than CSA.

Mrs Cunningham: And make a point? That might be good, "CSA or equivalent." I see a couple of frowns. Well, if the committee wants to advise us as to that being the solution to our dilemma, then let them do it.

I suggest, Mr Chairman, that we've discussed the manufacturing capability ad nauseam, and only they can do it, and that we've discussed the affordability. Remember, the action for Ms Anderson now in sending our report to the committee is discussion in the report. We've had ample discussion on manufacturing, we've had ample discussion on affordability, we've had ample discussion on education awareness and we've had ample discussion on funding. We haven't had much discussion on rentals; I think we should discuss that now. But my view is that we've got enough information so far to put all of that into a report and that we should just maybe have a short discussion on rentals. Is that fair?

Mr Dadamo: That's fair.

Mrs Cunningham: And "Other Issues," on the back. All right, let me take that one on too. Individual rights versus society rights: we've had ample discussion on that. Environmental concerns are well documented in our report by witnesses who came before the committee. Liability and insurance has been discussed, but I haven't heard your views on skateboards, rollerskates and rollerblades. I've given my own, and that was that we're having enough trouble with what we've got.

Ms Murdock: They aren't vehicles under the Highway Traffic Act, either.

Mrs Cunningham: No. It would mean another amendment. So perhaps anyone who wants to could give their view on rental companies and on skateboards, rollerskates and rollerblades being included in the report.

Mr McGuinty: I'm not sure we have to do anything with respect to rentals. I just think that if I'm in the bicycle rental business and the law requires that my customers wear a helmet, I'm going to have to supply them.

Ms Murdock: It's like a bowling alley with bowling shoes.

Mr McGuinty: Sure.

Ms Murdock: If you want to be in business, you provide bowling shoes if you run a bowling alley, right?

Mrs Cunningham: They sure do.

Ms Murdock: If you want to be in business to rent bikes, you're going to have to provide bicycle helmets to abide by the law.

Mr McGuinty: Just to conclude, with respect to skateboards, rollerskates and rollerblades, I think you've got the right approach there, Dianne, but you've got to develop a strategy here in terms of doing this thing. If we

want to broaden it some time in the future, that's another matter, but I think this will be a significant inroad in and of itself without having to try to stretch it. I think that will be a difficult one. It's much more difficult to market the other one, and that is saying, "Listen, your kids can't go out and skateboard or rollerskate or rollerblade unless they've got a helmet on."

Mr Klopp: Basically it's the same as the member across. Skateboards, rollerskates—ironically, when I see those kids they're all wearing their hockey helmets, because they're playing. It's so bizarre. But to get into that mess, no. If we do this right—

Mrs Cunningham: Yes, you're right. They've got these things from their soccer and hockey.

Mr Dadamo: Elbow-pads and shin-pads.

Mr Klopp: The time someone made that comment for those against this—they said, "Well, why don't you do skateboards?"—I almost blurted out: "For heaven's sakes, those people are smart enough. They're doing it on their own already." But I just bit my tongue.

Mrs Cunningham: You're right. You were in control. Would I be presumptuous if I threw out another date?

Mr Klopp: Do you want to go back to that again?

Mrs Cunningham: I don't think it's up to this committee to tell us; I think we're the ones who have to decide. I certainly think, given this discussion and the two-year thing, that if we get this report in June, if we get it early—what are we now, the middle of May?

The Vice-Chair: The end of May.

1740

Mrs Cunningham: The end of May. If we get this back early enough, we may have hopes that the bill will actually be as is. If it is as is, I think the sooner we get it passed with a date, the better. If we got it passed this May or June—or July, God help us—

Ms Murdock: The House may not be sitting.

Mrs Cunningham: I'm in there for those discussions, Sharon. That's why I said July.

Mr Klopp: If they've heard the rumours in opposition, then you can't go back.

Mrs Cunningham: That's right. In opposition you hear these things.

I think October 1994 would give more than two years, if we could get it through this spring. If we don't get it through until the fall, which is after October—remember, the House doesn't come back until after October—it still gives them two years.

Ms Murdock: Third week of September.

Mrs Cunningham: After Thanksgiving, usually. No?

The Vice-Chair: Third week of September.

Mrs Cunningham: It just happened that way this year.

Ms Murdock: September 23.

Mrs Cunningham: Was it? Did we come back on the 23rd?

Ms Murdock: We came back on September 23.

Mrs Cunningham: I was here.

Ms Murdock: The rules now say the third week of September.

Mrs Cunningham: All right. If we're fortunate and push a little, we could get it in—we're looking for direction from Mr Dadamo on this. Then we could have it done in the spring. He's it. We're going to blame George.

Mr Dadamo: I think we obviously have to confer within the ministry.

Mrs Cunningham: That's right.

Mr Dadamo: I'm not against the deadline, sitting here and setting up a date, because I think it would be nice, but realistically, does it make any sense at this point? I think we'll have to talk within MTO and come back to you on it.

Mrs Cunningham: But you know that we have to give them a date, because the ministers have a difference of opinion on this. They're going to be influenced by what we want. I was trying to be a good listener today.

Mr Dadamo: You were a good speaker too, by the way.

Mrs Cunningham: I was also a good speaker.

Mr Dadamo: Excellent.

The Vice-Chair: I believe the concern about the date, if I'm not incorrect, is that if we don't give a specific date it will indeed get lost somewhere in a big dark hole in some ministry and will never see the light of day again. I think everyone in this room has indicated that they support the bill, maybe not each and every thing—there's still the odd question—but they support the basis of the bill. That's where the concern rises and that's why Ms Cunningham is pushing for a date. If we could be assured that indeed it would not drop into a big dark hole in a ministry, I don't think Ms Cunningham would have the concern over the date to the extent she has.

Mrs Cunningham: I would just put it down to one word, "responsibility." The toughest part now, after all this work, is deciding on a date. Since we've made all the other tough decisions—and by the way, I think you've been wonderful. We have made some tough decisions. They may be changed when we get the report back.

But I think we should put in a date. I think it would give the ministers some direction, which is what they're looking for. If they don't like it, their people will say so in the committee and tell us. I can't believe that we wouldn't set a date, because that's the tough part and that's what we're elected to do.

Interjection.

Mrs Cunningham: Nothing.

Ms Murdock: Yes, because we can always change it.

The Vice-Chair: I believe Mr Edgar has a point that he wishes to make.

Mrs Cunningham: No, we'll change it here because the committee report comes back here.

Ms Murdock: Clause-by-clause.

Mrs Cunningham: Oh, I see, yes.

Ms Murdock: Clause-by-clause is done in here.

The Vice-Chair: Ms Murdock, just a second. Mr Edgar.

Mr Edgar: I didn't mean to interject or interrupt, but I think the minister has confidence in the committee to make an appropriate recommendation. You're all pretty well briefed on all the issues to make a recommendation. You've heard all kinds of witnesses. Setting a date would be one. If the people in the affected bureaucracies think that's impractical, then they'll tell you in the report that comes back.

Mr Klopp: I just, maybe for the record—or maybe I don't want to be on the report, I don't know.

The Vice-Chair: You can't have it both ways.

Mr Klopp: To me, the report said on the first page that they were going to come back by fall. Now we've heard June. Is this an old report here, that we've asked the committee to come forward?

Mrs Cunningham: Yes, we've changed that.

Mr Klopp: Okay, now I've got that clear in my mind. For me, having trouble picking the date is because I heard time and again from those who want the bill. I really truly want something. It doesn't matter to me what election day it is. I mean that.

Mrs Cunningham: That's good.

Mr Klopp: But the people who unfortunately will be the ones who throw roadblocks for a while, those who came and talked against it, are those who say, "You've got to have a long time in your education program and awareness." For me today to say two years, and we can say two, but recognize that come June when I get this report back—that's the most important thing, to get these committees off their duffs and get back here to show us what the nuts and bolts are of education and awareness. To me that's the key to this whole thing working or not working.

So let's make sure they get back here. If they're not here on June 27, I know I will be sending a nasty letter to my favourite Gilles Pouliot and asking: "Where's the report? You'd better have a dam good reason because you're embarrassing a lot of people, who are all legislative workers here." Then if they come back and say it's going to be after two years—we can say today, "Let's put two," but I just want to make it very clear from my perspective that the report we see at the end of June will be the time I'll then be able to clear my conscience on what is this date here. I just want that on the record.

Mr McGuinty: Have you suggested a specific date?

Mrs Cunningham: I've suggested October 1, 1994.

Mr McGuinty: I think the discussion is largely academic, because we're going to need some key information that's to be provided. But based on that assumption and subject to our reviewing, and obviously that's something we're going to have to do, I don't have any difficulty going with that date.

Ms Murdock: Likewise, the same as Dalton, I don't have any difficulty with setting the two-year date. We're working on the presumption that we will have the report of the interministerial committee before the end of June, before the House rises. We will have gone through that, and then we're also working on the presumption that it will get third reading at least by September or October, which is a fair presumption, depending on what the legislative agenda

is, and then that two-year date, correct? So it is subject to change; I mean, it could be subject to change in the clause-by-clause analysis.

Mrs Cunningham: That's right.

Ms Murdock: Yes. Fine. Two years.

Mr Dadamo: That's fine.

The Vice-Chair: I believe we have consensus on the last issue, which is that the date of two years is to be set, October 1, 1994, subject to those issues stated by Mr McGuinty and Ms Murdock, correct? Okay. Hearing that, is there anything else?

Ms Anderson: I'd just like to ask how you'd like to proceed from here; if I just take what you've said about pages 3, 4 and 5 and bring it back on Monday for you to look at?

Ms Murdock: Maybe the clerk can help us, Mr Chair. Do we have anything else except the Workers' Compensation Board report, that is due at some point, right?

The Vice-Chair: Except for that report.

Ms Murdock: I'll doublecheck on that. This committee, again in terms of the clause-by-clause on this, because I don't imagine it's going to take a tremendously long time, given the number of clauses there might be—my understanding, and correct me if I'm wrong, assuming that the labour relations gets first and second reading in the House, is that it comes in here. I also understand pay equity may be coming in here following OLRA, is that correct?

The Vice-Chair: It is part of our responsibility as a committee.

Ms Murdock: So the reality is when are we going to do this?

Mrs Cunningham: The reality, in my view, is that this will take a day to do. You have to find the time.

The Vice-Chair: Ms Murdock, should the other two bills you talked about be discussed and indeed be passed at first and second step, we're not going to see those till the summer break. This is in essence all we have before us, so hopefully we can resolve this and have this bill out of here by the break.

Mr McGuinty: We still haven't answered Anne's question, which was will we be able to come back on Monday?

The Vice-Chair: Monday it is? Okay.

Is there anything else to come before the committee? Hearing nothing—

Ms Murdock: Just a minute. Would it give you more time, Anne, to do it Wednesday instead of Monday, or does it make a difference?

Ms Anderson: Yes, but the interministerial committee—

Ms Murdock: Oh, the sooner they get it.

Ms Anderson: If there are any changes you want to the draft on Monday, then it's not going to go through till later.

Ms Murdock: Good point.

Ms Anderson: So they're not going to get it. The earliest would be the end of next week and if not, the week after.

The Vice-Chair: The committee stands adjourned.

The committee adjourned at 1750.

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Chair / Président: Kormos, Peter (Welland-Thorold ND)

***Vice-Chair / Vice-Président:** Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
Conway, Sean G. (Renfrew North/-Nord L)

***Dadamo, George** (Windsor-Sandwich ND)

***Jordan, Leo** (Lanark-Renfrew PC)

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***McGuinty, Dalton** (Ottawa South/-Sud L)

***Murdock, Sharon** (Sudbury ND)

***Offer, Steven** (Mississauga North/-Nord L)

***Turnbull, David** (York Mills PC)

***Wood, Len** (Cochrane North/-Nord ND)

***In attendance / présents**

Also taking part / Autres participants et participantes:

Cunningham, Dianne (London North/-Nord PC)

Edgar, David, special assistant, legislative, minister's office, Ministry of Transportation
Strathdee, Andrea, executive assistant to Mrs. Cunningham

Clerk / Greffier: Brown, Harold

Staff / Personnel: Anderson, Anne, research officer, Legislative Research Service



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Monday 1 June 1992

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Lundi 1 juin 1992

Standing committee on resources development

Highway Traffic
Amendment Act, 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant
le Code de la route



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 1 June 1992

The committee met at 1600 in committee room 1.

HIGHWAY TRAFFIC AMENDMENT ACT, 1992
LOI DE 1992 MODIFIANT LE CODE DE LA ROUTE

Consideration of Bill 124, An Act to amend the Highway Traffic Act / Loi portant modification du Code de la route.

The Chair (Mr Peter Kormos): At 4 pm the whip's office is represented here by one of her functionaries and the Chair is here, but the rest of the committee is not here. The whip's office's functionary is now leaving at 4:01 pm. We'll wait, of course, until the committee members arrive. Sorry for the inconvenience to anybody present.

The committee recessed at 1601.

1645

The Chair: It's 4:45 pm. Mr Waters, the Vice-Chair, is here, Mr Dadamo a committee member is here, but in view of the fact that nobody else is yet here, we'll recess until people appear. My apologies to the people who have been waiting.

The committee recessed at 1646.

1703

The Chair: There is a quorum notwithstanding that all three caucuses are not represented, so we will proceed. There is the draft of the committee report based on the committee's discussions of Wednesday, May 27, chaired by the Vice-Chair, Mr Waters, and I appreciate his acting as Chair for that date.

Ms Cunningham, did you have anything to say about this matter? You should also note that there is staff here from the Ministry of Transportation who may want to address the issue of response to the numerous issues put to that ministry. We'll start out with any comments you might have on the draft report

Mrs Dianne Cunningham (London North): Mr Chairman, I would like to thank Ms Anderson for this, because she did work from our last meeting on Wednesday. We had it very quickly, and I think it's extremely inclusive.

What I would like to do now is go through it, and perhaps we could take it one step at a time under the major titles: "Introduction," "Coverage," "Enforcement" etc. I do have some recommendations for change.

The Chair: Okay, let's start with page 1, "Introduction." Any comments on the introduction? No? Page 2, "Coverage." No comments? Page 3, balance of "Coverage," on into "Enforcement." Any comments in that regard?

Mrs Cunningham: I do, on enforcement. I would ask Ms Anderson if she would consider putting some examples in there. Under "penalty," it says, "the current penalty for offences is \$78.75," and maybe in one of the appendices we could add that pamphlet put together by the city of

Toronto cycling club. It gave an example of what they are, so that would be my only change there.

Ms Sharon Murdock (Sudbury): Sounds good.

The Chair: To assist research, the committee doesn't want to include in there any recommendation for dealing with what are de facto young offenders but not persons covered by the Young Offenders Act, because this is provincial legislation?

Mrs Cunningham: We did ask a question on age. Back a page? Here it is. Under "Who should be covered?" we did ask the joint committee to look at the clause in the bill, but we asked whether the appropriate age should be 12 or 16, so we'll take their opinion on that. That was part of the concern.

The Chair: Going on now to page 5, "Helmets." Okay, page 6.

Mrs Cunningham: I have changes, Mr Chairman, on pages 6 and 7; perhaps you could help me with this. We have to go back to page 5 where we're talking about manufacturing: "The manufacturers contacted suggested they needed at least two years to build up a large enough supply." Remember, the committee we're sending it to are the representatives of the different ministries, and in my view many of them won't have the same information we have and many of them will not come to the same conclusions that we have, so I think it's our responsibility to educate them.

But when we've already made up our mind, I'm not sure we need to ask them: "What lead time would manufacturers require in order to develop sufficient manufacturing capability?" and "Are there opportunities to expand Ontario's manufacturing base?" I think we've answered those questions in the section. I think we ourselves struggled with the issue around that lead time of two years and I don't want them to come back and say, "It's going to take five years to get these things manufactured," so I would suggest we take those questions out because I think we've already decided the answers to both of them.

The Chair: Comments in that regard?

Ms Murdock: In terms of lead time, I agree. In terms of opportunities to expand Ontario's manufacturing base, we looked at one or two areas—every time I speak the bells ring.

Mrs Cunningham: That's right; we noticed.

Ms Murdock: But I do think there are probably other opportunities we haven't even looked at, that people in MITT, for instance, may have more and different ideas, and therefore I think that question should stay.

Mr Daniel Waters (Muskoka-Georgian Bay): I have a similar comment. I agree with Ms Cunningham on the lead time, but I would hope we could interest someone in Ontario to manufacture the helmet, so maybe there should be a query as to MITT. I don't know how they go

about these things, but getting someone interested in and indeed—

The Chair: Do you want to modify your position at all to accommodate those people?

Mrs Cunningham: Yes, I think we've been really good on that in this committee. It's been a great committee in that regard.

The last sentence on page 5, if you could look at it: "The government could actively promote the establishment of local manufacturers." I think in dark print there we could say, "The committee would appreciate any suggestions you might have in this regard," something like that, instead of asking them a question and giving them ideas towards answers we don't want.

The Chair: So you are suggesting that the first sentence, "What lead time would manufacturers require in order to develop sufficient manufacturing capability?" be deleted, but that the second question, "Are there opportunities to expand Ontario's manufacturing base?" be included.

Mrs Cunningham: That would be a good one. Yes, they may have some good information for us there.

1710

Ms Murdock: It doesn't have to be limited to helmets. It could be bicycles or there could be other manufacturing areas that would be related to the helmets. That's all I'm saying.

The Chair: So is there consensus that the first question be deleted but that the second question remain?

Ms Murdock: Yes.

The Chair: Thank you.

Mrs Cunningham: On page 6 under "Affordability," second paragraph: "The committee heard that price of helmets has been decreasing and that some models...." I would like that word changed to "'many' models can be purchased." I think we leave the readers with the impression that there are just a few at \$25 to \$35, and I've just been explaining my experience at Christmas. The reason I got stuck with a \$45 helmet is that I was in a hurry and I didn't bother filling out the forms or speaking to a distributor. I went right into a store, where it was more money than what it is here. So I'd like it changed to "many." I was going to put "most," but "many" I think is a good compromise there.

The Chair: Is there a consensus in that regard?

Mrs Cunningham: Is there a consensus in that regard, for Hansard?

Yes, there is, Mr Chairman.

I may be being picky, but I think we've put a lot of work into it; we're supposed to be steering this, and we're looking for good advice. I've got a question as to why we ask the question. The question is this: "What can the government do to ensure that the price of buying a bicycle helmet to comply with the law is not an additional burden on those who can least afford it? What can it do to ensure that bicycle use is not reduced?" I agree that those were two concerns, but I don't want to give people the idea that we're overly concerned about these two issues, and I'm wondering if it's their job to advise us in this regard or

whether we should be advising them. It's a moot point, but I would appreciate any comment on it.

The Chair: You don't want to overemphasize the negative.

Mrs Cunningham: That's right.

The Chair: Any comments in that regard? Do you have suggestions as to how that might be dealt with, to either delete that or change the wording?

Mrs Cunningham: I would like a positive response to them, that is, that as part of the public relations campaign around the wearing of bicycle helmets we should be underlining the fact, which we've already done in a sense, that certain organizations put out these pamphlets and that pamphlets that are already produced and paid for by other organizations should be part, as far as possible, of the government's or school board's or any public body's public relations campaign. I think we miss out on so many opportunities to use what other people put together.

I'll mention a couple of things that happened in the last week at my house. Flyers go out from different stores. I won't mention any, but I was really impressed with two or three of the major department stores using the back page of their flyers with little comics, the whole page on bicycle safety and the importance of doing certain things to your bicycle and wearing a bicycle helmet. There's a lot being done by parties in the private sector now that we should pick up on and perhaps go to them when we see something like that and say, "Would you allow us to use that and distribute it in our schools?" for instance.

Mr Waters: On the affordability part, I was wondering if indeed we wanted to make a comment about affordability when it came to those less fortunate, that we try to get people like the OMA, which assists folks to buy bicycle helmets, to direct their efforts to those who can at least afford it, rather than to make the comment or to ask another question. I don't know exactly how we would word that.

Mrs Cunningham: There's another good suggestion, Mr Chairman. The pamphlets right now are in doctors' offices, so it really implies that you have to have a reason to see a doctor before you get it. These are the kinds of suggestions that could come back from the group, but perhaps some of us could be making a list too and saying these are opportunities to get information out to families who will have a challenge in purchasing these helmets. It's our responsibility, I think, as a government and a committee to deal with Triaminic, for instance, and ask, "Would you put your pamphlets in schools?"

I'm certainly prepared to do that from my experience and I'm certain some of you have opportunities. I know Andrea could put a list together, if that's something the committee would want, and send it along with the report to the joint committee, showing that we know pamphlets are put together and we can be taking advantage of this information for affordability, and also support through the back door, I guess, the fact that people are not going to be discouraged from riding bicycles, because there are reasonably priced helmets.

The Chair: Quite right. Is there agreement in that regard?

Ms Murdock: Yes.

The Chair: Fine. "Implementation," on to page 7. Ms Cunningham.

Mrs Cunningham: Here we go again. This one I really find difficult. I'm probably biased, but I certainly appreciate my colleague's suggestion on this: "How long will it take to achieve the appropriate level of voluntary compliance?" I feel that was a route we went with seatbelts, and I just feel so strongly that it will take for ever; that's the answer we're going to get, that it will take for ever.

The Chair: What are you suggesting in this regard?

Mrs Cunningham: I'm suggesting we don't ask the question but that we talk about the fact that the reason we're doing this is that we haven't had the voluntary compliance after as long as 10 years of public education on behalf of some school boards. Where there has been a serious effort made in the city of Ottawa, for example, by the municipality because of tourism and what not, and in the city of Barrie because of one physician who, along with the Kiwanis Club and the school boards, led a tremendous campaign and therefore they have the compliance. I haven't got his name.

Ms Murdock: Dr Brian Morris.

Mrs Cunningham: Would Hansard please put in the name of Dr Brian Morris, because he did do a wonderful job.

The Chair: Quite right. There's a whole lot of legislation that, had it waited for 25% voluntary compliance, never would have been implemented. Mr Waters, you're going to respond to that?

Mr Waters: I'd just say take the compliance level and strike it out.

The Chair: You're talking about the first sentence.

Mr Waters: We intend to pass a law that indeed is going to make bicycle helmets mandatory. By having that in my concern is, how long do we wait if we start looking at that? So why don't we just strike that section?

The Chair: That the whole paragraph beginning at the end of page 6 and ending at the top of page 7, subtitled "Compliance levels," be deleted; that's what you're suggesting?

Mr Waters: Yes.

Mrs Cunningham: I don't mind the compliance. I don't mind putting it in here, because it was stated that Transportation has indicated this, but I think we should make another sentence something like this: "In spite of these numbers, this committee has seriously considered the date of implementation and has decided to recommend the date as follows," which is—

The Chair: Might I suggest this?

Mrs Cunningham: Yes.

The Chair: If you want to retain compliance levels—just for the assistance of research—that at the bottom of page 6 it read: "The committee has heard that for the law to be successfully implemented, it is advisable to achieve some level of voluntary compliance prior to the legislation taking effect. The level is currently estimated at 5% to 8% across the province, though certain regions such as Ottawa

have a higher compliance level," then delete the next sentence.

Mrs Cunningham: I agree with that.

The Chair: Is that agreeable? Is there any need, then, for the question? Is that similarly deleted?

Mrs Cunningham: Great. We sure think alike, don't we?

The Chair: "Education and awareness": You have some comments, Ms Cunningham, and then Ms Murdock.

Mrs Cunningham: I think I'll ask Ms Anderson to raise an issue here with regard to funding and education first, and then we'll deal with the second part.

Ms Anne Anderson: There was the one question about the funding for the PR campaign; whether the committee feels the funds should come from existing budgets within the ministries or whether there should be some request for additional funding on that; whether the committee has any thoughts on that.

1720

Ms Murdock: I don't know whether we can actually do that. I think it depends on the second part of this, which is what I wanted to speak to anyway: which ministries would be involved in the campaign itself and in its funding. I've said before on the record that I do not believe for one minute that this should be the complete and sole responsibility of the Ministry of Transportation, that all of the ministries should be involved and that part of the question we should be asking the interministerial committee is to what degree percentage-wise each of the ministries should be involved.

For instance, we are going to be asking the Ministry of Education to do a hefty job of educating in the two years or however much time it's going to be in the compliance section, and therefore it is probably going to have the most onerous task of sending that out. Tourism and Rec is going to be sending out pamphlets and brochures to all the tourism operations in the United States and Canada, so they will have an additional cost, which probably only they and their bureaucrats can figure out how much it would be.

Maybe part of our recommendation could be—I haven't given this any thought—that all of the ministries put money into a pool. My own view is that each of the ministries should designate in its own budget a certain amount of money which the interministerial committee has determined will be the percentage of the total that it will contribute.

The Chair: Other comments? Ms Cunningham, did you want to respond to that?

Mrs Cunningham: I agree with Ms Murdock. I would only add that within the Ministry of Education, and certainly the enforcement officers and Tourism, there are many levels where they're already on the curriculum: bicycle safety, education, and one would add the helmet to it now, and the fact that this will be law by a certain date. My expectation is that this interministerial group will probably come back and say to us, "Yes, but as we really want this to be implemented appropriately two years from now, it's going to take more money to do it and there will be new money required." That's what I think they're going to tell us, and we should ask the question.

It says, "How would a public education awareness campaign be conducted, and for how long? What are the estimated costs? Which ministries would be involved in the campaign itself and in its funding?" I don't mind the questions as long as we talk about the many campaigns that are there now, as you've suggested, and the ministries that already spend money, so they're not going to come back at us and make us all feel guilty and think this is a brand new deal, because in my view it isn't a brand new deal. I think we should add to it, that's my point.

The Chair: What are you suggesting be added to it?

Mrs Cunningham: "Talk about the many campaigns we have now" is what I've got written in my notes, and then say at the end, "In spite of these efforts"—say it again—"in spite of all the money that's gone into public education around bicycle helmets which has been done in the schools, home and school associations and what not have advised us, there's no compliance and we need the law." But I still don't mind having the questions.

The Chair: Ms Murdock?

Ms Murdock: I'll defer to my colleague, because we both raised our hands at the same time.

The Chair: Yes, but I recognized you first.

Ms Murdock: Okay. I have no objection at all to what you just said, but there are some ministries that have not been spending money on bicycle safety, and therefore for those ministries it would have to be a new budget item for them. I'll refer again to the Ministry of Tourism and Rec. I can't imagine that at the present time they're sending out the bicycle laws for Ontario to the different tourist bureaus to hand out, because it isn't mandatory, so it would be a new and added expense, although maybe MOT would provide the pamphlets for MTR to forward. I don't know how they'll work that, and I think those kinds of things would have to be worked out among themselves.

In terms of the existing programs, if they do what we're suggesting, which is to contact those manufacturers that already have programs under way and so on and implement their information packages as well as the ministries', then I think it will probably work out.

In this last sentence, "Which ministries would be involved in the campaign itself and in its funding?" albeit I like the fact that it is separated, I want it clearly understood that it is separated; it's two different kinds of things. "Which ministries will be involved in the campaign itself? Which ministries will be involved in its funding?"

The Chair: Okay, Mr Waters?

Mr Waters: We've talked about a couple of the ministries. I think the ministry that should have more dollars than any other for an education campaign is indeed the Ministry of Health, because the entire campaign will cost them less than one head-injured child.

Mrs Cunningham: Less than one, you're absolutely right.

Mr Waters: If you save two head injuries, indeed you've more than paid for the campaign.

The Chair: So you're suggesting that the statement here should be to the effect that the Ministry of Health be the lead ministry in terms of helmet-use campaigns?

Mr Waters: Not that they should be the lead ministry, but that they should have the dollars available due to the massive savings they could receive from the fact that the children are wearing helmets.

The Chair: So you are suggesting that in view of the considerable savings the protection would create for the Ministry of Health, it be the primary funder of educational programs?

Mrs Cunningham: Or a major, because we wouldn't have any idea about calling them primary.

The Chair: Ms Murdock?

Ms Murdock: I was going to suggest initially that we designate some ministries by priority, and then I thought: "No, that wouldn't be fair. They should probably work that out among themselves and let their deputies fight it out." But if we're going to go the route of suggesting ministries, I think Transportation, Solicitor General, Health, Education and Tourism and Recreation should be the five designated as prime movers and shakers.

The Chair: What's your response to that?

Mrs Cunningham: I think Ms Murdock has in fact identified the five that any one of us would identify, and that comes from what we've heard before the committee. Those are the ministries that seem to have been referred to more than any other, and I think at this point we should be thanking Health for the encouragement they've given us, because in fact they have stated on a couple of occasions that they are very interested in prevention and that they're in support of this legislation, as has the Ministry of Transportation, for which we are grateful.

Ms Murdock: On that point, though, I also agree with Mr Waters on the idea that it should be stated very clearly that the cost to Health of one head injury would provide all the moneys necessary for a massive education and PR campaign.

The Chair: Is there consensus that it ought to be inserted as part of the main body of the paragraph?

Mrs Cunningham: Yes.

The Chair: Okay, there's consensus in that regard. We're down now to the queries being put to this inter-ministerial group. What's being proposed?

Mrs Cunningham: Many groups felt very strongly about this legislation, Mr Chairman, and they stated they would support us if the public education campaign went along with it. That's why I feel we should have the answers to these questions.

Mr Waters: We could list the ones we know, if that's what we wish to do, and ask if there are other ministries.

Mrs Cunningham: We did. Which ministries would be involved in the campaign itself and in its funding is the second part, even though we've told them which ones we think should be.

The Chair: What are people suggesting? Make a proposal as to what ought to be added, if anything.

Ms Murdock: I think the funding aspect should be separated so it has a focus all its own, rather than included in that sentence.

Ms Anderson: Just put it in two sentences?

Ms Murdock: Yes.

The Chair: Agreement? Fine, we're down to date of implementation, date of coming into force. Any comments on that?

Mrs Cunningham: The only thing is that instead of "suggests" I would put "recommends unanimously that the bill should come into force," because we did. We struggled enough; we did more than suggest. Other than that, I think it's a great report.

1730

The Chair: Okay. We've still got to deal that. "Recommends" as compared to "suggests"; are there any other comments, first of all, on an implementation process and the suggested, at this point, implementation date?

Ms Murdock: Just to refer back to last Wednesday when we discussed this, for those of us who were here, we were all agreed on October 1, 1994, subject to when it appeared before committee etc. The legislative process has to be taken into consideration.

Mrs Cunningham: "Subject to advice on the lead time required."

Ms Murdock: It is stated in the middle.

The Chair: Obviously, this proposition can't be taken in isolation from the other parts of the recommendation. So are you agreeing with it or disagreeing with it?

Mr Waters: I think Ms Murdock's concern is if it should get held up in the House or something for an unrealistically long period of time. We can't predict that, so we're saying we've set that date.

The Chair: Quite right. It's only a recommendation.

Mrs Cunningham: So instead of saying "suggests" put the word "recommends," and if you want to and we all agree, we could even say "unanimously," which I think says something for the committee, because all three parties did agree. So why not for once say it? It doesn't make it look like just the government, it makes it look like all three parties. I've been on the other side a long time.

The Chair: What do you say to that, Mr Waters?

Mr Waters: Do you mean it would be twice in one day?

Mrs Cunningham: Yes, right. Touché.

The Chair: There are two propositions here, one that—

Ms Murdock: The Liberals aren't here. We can't unanimously recommend something without them.

The Chair: Wait. One is that "suggests" be changed to "recommends." Is there a consensus in that regard?

Mr Waters: Yes.

The Chair: The second recommendation by Ms Cunningham is that it be further amended by saying "unanimously recommends."

Ms Murdock: Yes.

Mr Waters: Very good. That would be fine.

Mr George Dadamo (Windsor-Sandwich): But they're not here.

Mr Waters: But they all agreed last Wednesday.

The Chair: We have a quorum.

Ms Murdock: Sure. We're in favour with Mrs Cunningham.

The Chair: Is there consensus then that it ought to read "unanimously recommends?"

Ms Murdock: Agreed.

The Chair: Fine. That completes the consideration of the report as presented. Is there anything else?

Mrs Cunningham: Just to say thank you, certainly to the staff and especially Ms Anderson and the representation from the Ministry of Transportation and my office, and certainly to my colleagues on the committee. It's been an interesting process. I think all of us will watch carefully to see what happens. I just hope this comes into effect while this government is still in office, and I have every hope it will.

The Chair: It all depends upon what your view is as to how long this government's going to be in office.

Mrs Cunningham: You said it, Mr Chairman.

Ms Murdock: I have no doubts.

The Chair: This draft report has been the subject matter of further recommendations. One, is it the committee's pleasure that the report prepared in response to today's comments be presented to this committee for ratification, or to the subcommittee?

Ms Murdock: I'd like the subcommittee to look at it.

The Chair: Is there any comment in that regard?

Mr Waters: No problem.

The Chair: So are you moving that the subcommittee have authority to ratify the report as prepared by Ms Anderson?

Ms Murdock: I so move.

The Chair: She has so moved. Is there discussion?

Mr Waters: I don't believe Ms Cunningham is part of the subcommittee.

The Chair: Ms Cunningham will be there.

Mr Waters: Okay, I just wanted an assurance of that.

Mrs Cunningham: I'll certainly be reading it.

The Chair: Any other discussion? All in favour? Those opposed? That's carried, unanimously.

The Chair: We'll meet as soon as Ms Anderson lets us know this is prepared. Just so everybody's on the same—what do they call it, Ms Cunningham?—a level playing field?

Mrs Cunningham: It used to be "a rock and a hard place," remember? Every year it changes.

The Chair: Once this report is ratified by the subcommittee, of course it will be distributed to committee members then, but they will not have any entitlement to raise issues beyond that point. This can't go on indefinitely. Is that everybody's understanding?

Ms Murdock: That's my understanding.

The Chair: Okay, there's consensus in that regard. Then it will be sent to the Ministry of Transportation to be responded to on behalf of the interministerial group. We are urging them, as I understand it, to respond before we begin our summer break. There are only four weeks left.

Mr Waters: Depending.

The Chair: Well, depending upon what I read in the Toronto Star tomorrow. There are only four weeks left, give or take.

Mrs Cunningham: As far as I'm concerned, I get a vote in there, one vote.

The Chair: What we will do, then, is convene a meeting of the committee once Ministry of Transportation indicates its preparedness in terms of responding on behalf of

the interministerial committee. Is there consensus in that regard? Unanimous consensus? Everybody agrees?

Ms Murdock: We agree.

The Chair: Fine. The meeting is then adjourned, subject to any other matters that have to be raised.

Ms Murdock: Will we be sitting on Wednesday of this week, Mr Chair?

The Chair: No.

Mrs Cunningham: Not unless the interministerial committee has their meeting on Tuesday.

The Chair: There will be notice in the usual manner of the next meeting of the whole committee.

The committee adjourned at 1737.



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***In attendance / présents**

Clerk / Greffier: Brown, Harold

Staff / Personnel: Anderson, Anne, research officer, Legislative Research Service



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Standing committee on resources development

Subcommittee report

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Deuxième session, 35^e législature

Journal des débats (Hansard)

Mercredi 10 juin 1992

Comité permanent du développement des ressources

Rapport de sous-comité



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 10 June 1992

The committee met at 1546 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr Peter Kormos): The committee is meeting to consider the report of the subcommittee. The subcommittee met on Monday, June 8, 1992, and agreed as follows:

"That changes to the draft report be effected by legislative research service and sent to the Ministry of Transportation for distribution to the interministerial committee requesting response in reasonable time;

"That the draft committee budget in the amount of \$320,164 be recommended to the committee."

Mr Waters, I trust you move acceptance of this report?

Mr Daniel Waters (Muskoka-Georgian Bay): So moved.

The Chair: I understand there's an amendment to the report to change the figure of \$320,164 to \$320,218, amendment moved by Ms Murdock?

Ms Sharon Murdock (Sudbury): Certainly.

The Chair: Any discussion regarding the amendment? All in favour of the amendment, please indicate. Opposed? The amendment's passed.

Any discussion on the report of the subcommittee, either part 1 or part 2? I should indicate that part 1 was by agreement of the committee, which unanimously agreed that it would defer the matter of basically fine-tuning or correcting language. Then we're left with the issue of the budget.

Mr Steven Offer (Mississauga North): I'd like just to ask a question on the matter of the budget. From my previous discussion, I understand that this is the proposed budget of this committee for this upcoming fiscal year.

The Chair: That's correct, I'm told by Mr Brown, the clerk.

Mr Offer: I also understand that in the event there is any need for a committee to amend the budget through interim measures, that's also possible.

The Chair: Mr Brown, could you help us with that, please?

Clerk of the Committee (Mr Harold Brown): If it doesn't have sufficient funds, the committee can always prepare a supplementary budget.

Mr Offer: And the meeting time of nine weeks, which is indicated in the budget, is one which does not necessarily limit the committee, first, to nine weeks, and second, to one session or the other or any combination thereof.

The Chair: That's correct. I should tell you that I wrote to Ms Coppen, who is the whip for the government, some two weeks ago, asking her please to give us some sense of when committees would be meeting during the summer, obviously referring to this committee, so people

could make plans around that committee time. Ms Coppen acknowledged receiving my letter but made no response to me verbally and hasn't replied in writing. So this budget is prepared without any direction from anybody. The clerk, and I thank him very much for his initiative, has tried to anticipate, unfortunately without a great deal of help from anybody else, what could be the case for this summer and the balance of the year.

Mr Offer: Thank you very much, Mr Chair. I understand that this budget is based on an estimate of past time for committees as best the clerk can anticipate, but though it provides a certain direction, it does not necessarily bind the hands of the committee in terms of asking for more dollars in the budget or in fact not needing the dollars, asking for more time or in fact not needing the time. In other words, this budget does not cement this committee into nine weeks.

Clerk of the Committee: I don't believe it does. Without further direction, this is an estimate based on past experience of such a committee as this.

The Chair: If I may, please, Mr Offer, I want people to be clear on that because I would have concerns and I think every member of the committee would have concerns. It's clear that you can spend less than what the budget provides for, but we'd have concerns if somehow the budget constituted a restraint down the road on the number of weeks that could be spent in meetings. I suspect that's what your concern is.

We should make that clear as a committee, and I think perhaps the committee should articulate that this budget is being presented by way of something of a dance in the fog. There's no direction. We are presenting it, reserving—if this is what the committee wishes—the right, because there is no direction, to go back for more money in the event that the committee decides it should meet in addition to the period.

Ms Murdock: My understanding is that the House leaders and the whips haven't determined the length of time for the committees for the summer yet, and I don't know when we're going to find that out.

The Chair: Did you want to say something to that?

Mr Offer: No.

The Chair: Anybody else? Mr Waters, then Mr Dadamo.

Mr Waters: I have the same understanding, that the whips and House leaders have not yet determined what committees are sitting on what bills and indeed how long. If last year was any sort of sign of what happens, at the end of the month we will be told almost as we leave, because I believe negotiations last year didn't come to a conclusion until after the House had risen for the summer.

So I would hope that this is sort of an estimated budget based on the past, and that indeed there are no restrictions either way and that indeed we could sit for a shorter period of time or longer. If longer were indeed agreed upon by all parties, we would have no problems in revamping our budget to allow for those extra expenses.

Mr George Dadamo (Windsor-Sandwich): My sentiments exactly. Last year at this time we found ourselves in the same sort of quandary, where we had this budget presented before us but no direction to go in. We didn't know where we were going or what bill we were going to travel on. I guess if we could put some pressure on the whip's office to give us some direction right away so we can at least know what time during the summer we want to take off—I mean, at least we want to plan some vacation time.

Mr Waters: If I might, Mr Chair, I think the way things work is that first off the three House leaders have to sit down and come to some agreement, do they not, on what bills indeed will be dealt with?

The Chair: In theory the committee determines its own function, but that's but a theory.

Ms Murdock: I notice in the explanatory notes that the clerk has explained fairly clearly that certain labour law reform legislation will be referred to this committee. I know that everybody realizes it's the labour relations reform eventually, but pay equity is also expected in here. So we're going to be having two pieces of legislation that will require a fair amount of time.

The Chair: Mr Offer, do you want to make an amendment to the report of the subcommittee?

Mr Offer: I can't see where an amendment is necessary, Mr Chair, unless you have a suggestion. I don't see why.

Mr David Turnbull (York Mills): Just so long as it is articulated in the minutes that we don't want to restrict travel as a result of this budget but it is a proposal.

The Chair: I should let people know that Mr Brown, the clerk, who does work hard at these things and has been around here for a while, is advised and advises us that the Board of Internal Economy will not be meeting until July 7 for the purpose of considering this particular budget proposal, among other things. That's an interesting footnote to our conversation and to the issues raised by Mr Offer.

Mr Waters: With their not meeting until July, I would say that in the interim maybe we could pass this. Indeed it would give us an opportunity, hopefully, to have some idea of what we would be doing this summer and the length of

time and the cost thereof, and if we needed to revamp our budget, we could do it in advance of that July 7 meeting.

The Chair: Except we may not be here after June 25 to meet—

Mr Dadamo: We might.

The Chair: Anything might happen. We may not be here after June 25.

Ms Murdock: I haven't looked at this in great detail, but I would think nine weeks at \$17,496—a weekly sum could be devised, and if the clerk were, in the interim, to find out how long this committee was scheduled to meet over the summer, you could just correct it as needed on the basis of the calculations you made to do this one—could you not do that?—without our approval.

The Chair: It's essential that the committee approve the budget before it goes to the Board of Internal Economy, as I understand the process.

Mr Waters: The clerk, from his past experience, might be able to give us some wording that will guarantee some flexibility, should we need it. I can't see us using up nine weeks' budget this summer.

Ms Murdock: No, it's summer and winter.

Mr Waters: That also gives us the fall, then, to reintroduce a revised budget for the winter schedule. I would assume that the budget, as it stands, even if we didn't have any flexibility in it, would cover more time than we would ever dream of sitting this summer.

The Chair: There seem to be two options available to the committee. It can pass this report and this budget, having expressed its clear understanding that if it approves this budget for proposal to the Board of Internal Economy, that doesn't restrict the committee's ability to request more money in view of the fact that this budget proposal was made in the dark, or it can defer approval of a budget until later this month when maybe, just maybe, there'll be a better understanding of what's going to happen during the course of the summer and the balance of the year.

Mr Turnbull: In light of the fact that the Board of Internal Economy is not meeting until next month, I would suggest that we pass this with the rider that we expect to be able to revisit it if we overshoot.

The Chair: Is there any comment on that? Are you ready to put the motion to the vote?

Will all those in favour of the motion approving the report and adopting the report of the subcommittee indicate? Opposed?

Motion agreed to.

The committee adjourned at 1558.

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Owens, Stephen (Scarborough Centre ND) for Mr Dadamo

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Dadamo, George (Windsor-Sandwich ND)

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Standing committee on resources development

Committee budget

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Budget du comité



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Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 22 June 1992

The committee met at 1632 in committee room 1.

The Chair (Mr Peter Kormos): It's 4:32 in the afternoon. Ms Murdock is here; the Chair, of course, is here. The votes have been over in the House now for some time. I know Mr Dadamo is outside just around the corner waiting to come in. The staff have been waiting here since 3:30 this afternoon.

Ms Sharon Murdock (Sudbury): Mr Huget is here.

The Chair: Mr Huget is here, but since nobody else is here, we'll all just wait a little longer. Thank you.

It's now 4:32 and a half, and Ms Murdock, Mr Huget, Mr Wood and Mr Waters are here. Mr Dadamo is just outside the door. My apologies to the staff; they've been here since 3:30. No other people are here. We'll just have to wait. Thank you. My apologies once again.

Ms Murdock: Are we adjourned?

The Chair: No, we'll just have to wait.

It's now 4:38. The whip's office is here, represented by one of its functionaries. The NDP caucus, of course, and Mr Jordan is here. We're still waiting for members of the Liberal caucus, and we shall wait for some short time yet.

Ms Murdock: Mr Jordan's here.

The Chair: I indicated Mr Jordan was here. It's nice to see the whip's office here, represented by a functionary. Thank you.

COMMITTEE BUDGET

The Chair: It's 4:43 pm. I am advised that the clerk called the office of the whip of the Liberal caucus some few minutes ago. There is a quorum; that is to say, there are six committee members and the Chair present, which makes seven, which constitutes a quorum. In view of what has become a procedure over the last several months because of delays in getting started, is it the wish of the committee that we consider the matter of the budget, notwithstanding that the Liberal caucus isn't represented here?

Ms Murdock: Actually, we did discuss this at the last meeting we had, if my memory serves me correctly, and Mr Offer had said we would agree to the budget on the condition that it could be increased if necessary at a later date. Has the clerk found out whether or not that is the case?

The Chair: It's a question for the clerk, then?

Ms Murdock: Yes.

The Chair: Perhaps the clerk might want to respond to that.

Clerk of the Committee (Mr Harold Brown): With regard to the budget, there was no motion, as such, to approve the budget as it stood. On the understanding that there might be further information coming that would reflect on the budget, I reviewed the tapes, and that's—

The Chair: Mr Dadamo, do you have any views on this matter?

Mr George Dadamo (Windsor-Sandwich): We did talk about this aspect of it. What we don't know is if in fact we have time to travel in the summertime. We don't have any direction from the—

The Chair: Quite right that this is all a dance in the fog.

Ms Murdock: But that isn't the question.

Mr Dadamo: That's not the question?

The Chair: The question was put to Ms Murdock whether she approves of—Mr Offer is present. Does anybody want to move the budget?

Mr Len Wood (Cochrane North): I'll move.

The Chair: Mr Wood moves the budget. Any discussion on the budget, which is the same budget proposal we looked at last time we met, Mr Offer?

Mr Steven Offer (Mississauga North): Didn't we do this last week?

The Chair: We sure did.

Mr Offer: Why are we doing it this week?

The Chair: Are there any comments on the budget which has been moved for approval by Mr Wood?

All those in favour of adopting that budget and recommending that it be put to the Board of Internal Economy indicate. All those opposed? No opposition.

Motion agreed to.

The Chair: Any further discussion of any new issues? Thank you, people. Thank you, sir and madam.

Ms Murdock: That's it?

The Chair: We're adjourned sine die.

The committee adjourned at 1645.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 13 July 1992

The committee met at 1539 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr Peter Kormos): Good afternoon. There is a subcommittee report, as follows:

"The subcommittee met on Monday 13 July 1992 and agreed as follows:

"That in the event Bill 40 is referred to the committee this week, that the committee place the advertisement as amended in all English daily newspapers in Ontario and Le Droit;

"That in the event Bill 40 is referred to the committee this week, that five weeks of sittings shall commence on 4 August 1992, consisting of two weeks"—

Mr Murray J. Elston (Bruce): You cannot agree to that as a subcommittee.

The Chair: One minute. This is the subcommittee's report. Let's deal with it when we're finished making the report.

"That in the event Bill 40 is referred to the committee this week, five weeks of sittings shall commence on 4 August 1992, consisting of two weeks in Toronto and three weeks at other locations.

"That the subcommittee will meet again to define a list of locations for public hearings, to address arrangements for witness time before the committee, authorizations for the Chair and such other matters necessary for due preparations for the committee's deliberations in the event Bill 40 is referred to this committee."

That is the report of the subcommittee. Do you move acceptance of that report?

Mr Daniel Waters (Muskoka-Georgian Bay): Yes.

Mr Elston: Mr Chair, I wish to interject that by no means has there been any agreement at this stage at all on beginning the hearings on August 4, and that in fact it's premature for you as a committee to adopt the report, as it's my understanding that I will be in receipt of other material from the government House leader, hopefully this evening, for tomorrow's caucus meeting, which will have a different start date. At least that part of the motion I think should be deleted.

The Chair: I appreciate those comments. You may well be at an advantage over the rest of us because of your participation in House leaders' meetings. Do you want to respond to that, or do you want to incorporate that into your—

Mr Waters: I think the way it was worded was that we were working with, as a tentative date, the 4th. It wasn't written in stone by any means. It was just a tentative date.

Mr Elston: No, it isn't. You may very well get Bill 40 this week, but it says if you get it this week then you start on August 4. I think that you should say that in the event Bill 40 is referred to the committee this week, five weeks

of sittings shall commence in August 1992, and just leave the date out until we've had a chance to resolve that.

The Chair: It's not an unfair comment. Let's face it, the democratic self-control of the committee is, as we're all aware, subject to the sometimes less than democratic fiat of House leaders, so that's not an unreasonable proposition.

Ms Sharon Murdock (Sudbury): I was advised just before I came in here by my minister that there have been negotiations with the three House leaders for an 11th start date. We may be talking about another date entirely, so I do tend to agree with Mr Elston.

Mr Len Wood (Cochrane North): I'm just curious. The longer the start date is put off, does that mean the less and less amount of weeks the public hearings are going to be? If we wait two weeks, does that mean they'll be reduced to three instead of five?

The Chair: Not necessarily.

Mr Elston: I can answer that.

The Chair: Let Mr Elston answer that, as House leader for the official opposition.

Mr Elston: We're just in the process of negotiation, of course, but the negotiation is taking us for a full five weeks. But it appears that there is room through August and clear weeks in September, which will allow the five weeks without a problem for you.

The Chair: Mr Ferguson, did you want to make a comment?

Mr Will Ferguson (Kitchener): There was a condition attached to the motion, but that really seems to be academic at this point.

Mr Waters: Once again, we are overruled by our House leaders. It's out of our hands.

The Chair: This is a fantastic exercise. Ms Murdock.

Ms Murdock: I do not presume it's been discussed already. I know the opposition caucuses have retreats the same as we do. If we went five weeks straight, ours would conflict if we did indeed start on the 11th, because our retreat is scheduled for the 9th, 10th and 11th of September. So just be advised, that's all.

Mr Ferguson: We can work around that. We're not going to reschedule an entire retreat just because we happen to have hearings.

The Chair: It's good that the Toronto Star is back to work, because now we might be better advised about what's going on in House leaders' offices and in cabinet even.

Ms Murdock: Can I move that it be amended as Mr Elston suggests?

The Chair: Just be careful, because, "In the event Bill 40 is referred to the committee this week, that the committee

place the advertisement as amended in all English daily newspapers in Ontario and Le Droit."

The second point, the one that's contentious, is, "That in the event Bill 49 is referred to the committee this week, that five weeks of sitting shall commence on August 4, 1992, consisting of two weeks in Toronto and three weeks at other locations."

Is what the committee wants to say something to the effect that upon referral to the committee there will be five weeks of sittings, with two weeks in Toronto and three weeks in other locations, nothing more, nothing less; no time frames?

Mr Michael A. Brown (Algoma-Manitoulin): With respect, Mr Chair, I believe that was the consensus we had at the subcommittee meeting. I was reasonably strongly of the opinion at that point that we weren't very sure when we would be permitted to start.

Mrs Elizabeth Witmer (Waterloo North): I was wondering how the two and three weeks were arrived at—two weeks in Toronto and three weeks of travel.

The Chair: It was one of the matters of consensus by all participants in the subcommittee meeting this morning. If you want to comment on that, feel free.

Mrs Witmer: Yes, I would like to comment, because I think our representative made that comment in isolation of having solicited any opinions. In further discussion, we would personally prefer three weeks in Toronto and two weeks travel.

The Chair: Once again, to be fair to Ms Cunningham, she did make it quite clear that she was pinch-hitting this morning and did want a chance to talk to her caucus.

Mrs Witmer: She's had a chance to do that.

The Chair: We indicated that of course you'd be here to speak in your own right, which is what you're doing right now.

We've got the one amendment so far. That's, I presume, being adopted on the part of the mover as a friendly amendment.

Mr Waters: Yes, fine.

The Chair: Are you making this as an amendment to the subcommittee report?

Mrs Witmer: Yes, I wish to make that as an amendment.

The Chair: Okay, so that's ruled as an amendment. We're in the course now of discussing that and resolving the issue. Do you want to add to that?

Mrs Witmer: I think one of the things we need to be aware of is that the Ministry of Labour also is going to have two weeks of hearings on pay equity.

Ms Murdock: That's another committee.

Mrs Witmer: That's another committee, but it does involve some of the same people.

The Chair: Is there any further discussion on that amendment?

Mr Waters: I find it interesting, because that was my original proposal this morning, and now I'm wondering—

Mrs Witmer: I wish I'd been here, Dan.

Mr Waters: I don't think there's a problem with that. We came in with that originally this morning, so there's no problem from us.

Mr Elston: Our critic is not here these couple of days. Steve is away. I know it was his intention to be here for a couple of weeks—ie, Toronto—for public hearings and then going out and talking to people out in the hinterland. Everybody makes such a point of the fact that we never get out of this place to talk to people out there. From our point of view, that is what is important, particularly about this bill. It's a major piece of legislation and I think ought to be subject to people being able locally to come and visit the committee. I think two weeks here is fairly ample, and by the time we get out and go to some various communities which hardly ever see us—maybe they don't want to see us, but that's another matter. As soon as we advertise—if we're going to be in some places, I think it would be better.

I just would like to say, Mr Chair, that at the moment neither Mr Brown nor I is substituted into this committee. We might have to ask for time to get substitution slips so at least we can vote on the motion, which we would be prepared to resist. We would like two weeks here and three weeks out.

The Chair: Can everybody make sure that their substitution slips are provided so that there could be a vote on that?

Mr Ferguson: I think everybody who has an interest in this matter certainly would be prepared to be somewhat mobile in coming here to address the issue if in fact some of the smaller communities are not covered. You will still have, I think, ample time to cover the larger major centres across the province. I also think we have to recognize that this isn't a two-week hearing process; it's five weeks. I think it's a real commitment on behalf of the members of this committee. We certainly would agree with the suggestion of three weeks here, two weeks out in the province, knowing full well we're still going to get to the major centres that were covered under the consultation process as well.

Can we have the vote?

1550

Mr Elston: We have to ask for 20 minutes to get our last member here.

Mr Brad Ward (Brantford): Have we settled on three weeks here and two weeks on the road, or is that something you need some time to talk about?

Mr Elston: We settled on two and three, like it came in the report.

The Chair: It's going to be put to a vote, but people in caucuses are entitled to ring the bells here to get their members present.

Is there any more debate on Ms Witmer's amendment? I have the substitution slips now.

Mr Waters: No debate, Mr Chair, but if indeed we're going to end up with a 20-minute period for a vote, maybe we could lump some of this together so that more than just the two and the three—although it makes it difficult, I guess, when you're looking at cities to attend.

Mr Ferguson: That's the only issue we have to resolve. We have agreement on all the other issues, don't we?

Mr Elston: Actually, we should put the motion to amend the report. The August start date should be put first and finalized so they know we had a consensus.

The Chair: That was adopted by Mr Waters.

Mr Waters: No problem. We aim to please.

The Chair: All right, no further debate on the issue of Ms Witmer's amendment? Does anybody want to raise other issues before we recess, prior to the vote?

Mrs Witmer: What about the witness time? Have we determined that at all?

The Chair: That's an excellent point. Perhaps Mr Waters, on behalf of the subcommittee, could talk about what had taken place in that regard.

Mr Waters: Mr Brown is now back. What we had discussed in sub was 30 minutes, regardless of whether you represented a group or were an individual. We had found out on a couple of our trips that it was difficult to decide who was speaking as an individual and who was speaking for an umbrella group, so we were talking 30 minutes for everyone.

Mrs Witmer: In regard to that, if we're trying to accommodate as many people as possible, I would agree with the 30 minutes for groups. But I know I've had some individuals contact me and they purely are individuals, but they want to make a point. I'm wondering if we could limit their time to 15 or 20 minutes. I wonder also, when we're talking about a 30-minute presentation, if we were going to allow that for groups, if we would encourage people to devote 15 or 20 minutes to the presentation and to make sure they allow 10 to 15 minutes for questions. I think that's the valuable part, to have an opportunity to ask some questions.

The Chair: Obviously that's the sort of thing that's going to be discussed when the subcommittee meets again, as it's expected to in the report of the subcommittee we're voting on now. The subcommittee did discuss that and will undoubtedly be discussing it again.

A request for 20 minutes for people to bring members in?

Mrs Witmer: Would you know if they're still discussing the education bill? I hope Mr Turnbull will come back.

The Chair: I hope he will too.

Mr Elston: It may not be necessary. If it's the will of the government members to team up with Ms Witmer to stay here for three weeks and two weeks out in the hinterland, then another member from the Liberal caucus isn't going to matter. I don't want to waste a bunch of time waiting if it's going to be pretty well cut and dried.

Mr Wood: It could be a close vote.

Mr Elston: It's not going to be that close. It's six plus one vote against three.

The Chair: We'll recess for a few minutes.

The committee recessed at 1555.

1605

The Chair: Okay, we will resume. The first vote is on Ms Witmer's amendment providing for three weeks in

Toronto and two weeks at other locations. All in favour please indicate. Opposed? Ms Witmer's amendment carries.

We're dealing now with the subcommittee report, as amended. Are there any brief comments anybody wants to make?

Mr Brown: Could we have a recorded vote on that?

The Chair: On the one just passed?

Mr Brown: We weren't quite quick enough.

The Chair: I'm concerned, obviously, about the propriety of having a recorded vote basically after the vote has been counted. Obviously if there is consent, it could be done.

Mr Brown: You have unanimous consent, Mr Chair.

The Chair: Is there unanimous consent for that proposition?

Interjection: Sure.

The Chair: Okay, notwithstanding what the rules may provide for, there being unanimous consent the vote will be taken again. All in favour please indicate. Keep your hand—

Mr Paul Klopp (Huron): Am I supposed to vote?

The Chair: If your conscience moves you to vote, vote. Raise your hand and keep it up there until you've been recognized, please.

The committee divided on Mrs Witmer's motion, which was agreed to on the following vote:

Ayes—7

Ferguson, Klopp, Murdock (Sudbury), Ward (Brantford), Waters, Witmer, Wood.

Nays—2

Brown, Elston.

The Chair: Any brief discussion on the subcommittee report, as amended? All those in favour of accepting the subcommittee report, as amended, please indicate. Opposed? The subcommittee report passes.

Any other matters?

Mr Waters: Do you want to talk about some of the cities or leave that for—

The Chair: No, that's for the subcommittee to do. Do you want to propose a time for the subcommittee to meet next?

Mr Waters: Can we have an adjournment for a minute? I'd just like to ask Mr Elston a couple of questions. Probably off the record would be better.

Mrs Witmer: Will we have an opportunity to have a subcommittee meeting on Wednesday of this week?

The Chair: We sure could.

Interjections.

The Chair: The subcommittee will set a meeting time and place. Any other issues? There being none, we're adjourned.

The committee adjourned at 1609.

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Conway, Sean G. (Renfrew North/-Nord L)

Dadamo, George (Windsor-Sandwich ND)

Huget, Bob (Sarnia ND)Klopp, Paul (Huron ND)

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***Klopp, Paul (Huron ND)**

McGuinty, Dalton (Ottawa South/-Sud L)

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***Turnbull, David (York Mills PC)**

***Wood, Len (Cochrane North/-Nord ND)**

Substitutions / Membres remplaçants:

***Bradley, James J. (St Catharines L) for Mr Conway**

***Brown, Michael A. (Algoma-Manitoulin L) for Mr Offer**

***Ferguson, Will, (Kitchener ND) for Mr Huget**

***Ward, Brad (Brantford ND) for Mr Dadamo**

***Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan**

***In attendance / présents**

Clerk / Greffier: Brown, Harold

Staff / Personnel: Fenson, Avrum, research officer, Legislative Research Service



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Deuxième session, 35^e législature

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Rapport de sous-comité



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 15 July 1992

The committee met at 1536 in committee room 1.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr Daniel Waters): I'll call the meeting to order in the absence of the Chair, who is unavoidably detained for a few moments. We might as well get started.

A subcommittee meeting took place over the lunch-hour today, and I believe there is a report of that committee in front of everyone. Has everyone had a chance to go over the subcommittee report? Can I get a motion of concurrence? Do you want it read into the record or just a motion of concurrence or adopt it?

Mrs Elizabeth Witmer (Waterloo North): I would move that we adopt these recommendations.

The Vice-Chair: Okay, moved by Ms Witmer. Discussion on the motion?

Mr Michael A. Brown (Algoma-Manitoulin): I had the honour of attending the subcommittee meeting both yesterday and I believe Monday. There are a couple of things I would like to record, at least before we discuss the actual motion.

From our perspective, it has been the view of the Liberal Party from the very beginning that five weeks of hearings would probably not be adequate and that we are agreeing to the five weeks of hearings because that's the agreement the House leaders came to. But the whole game seems to have been changed in that the closure motion of yesterday is in essence dictating what this committee will do. It's dictating that we will start on August 4, where it was our hope that this committee would start on the 10th, but by a very unusual procedure the government unilaterally, by the closure motion of yesterday, has dictated to this committee what would happen.

I would like to make note of the fact that we oppose the closure motion and we oppose the start of this committee on August 4. We don't believe that's ample time for the presenters to get their presentations together and we do not believe it's ample time for the people of Ontario to consider this bill.

Having said that, I would move on to the second point. The second point is that our party believes that two weeks of hearings throughout the province is not sufficient, that there should be three weeks of public consultation across the province, not two. I would bring members' attention to the report, which mentions that we will go to these cities outside of Toronto: Thunder Bay, Windsor, Ottawa, Sudbury, Kingston and London. Those are six cities on a very major bill.

I've had the experience myself of sitting on two previous bills that related to labour relations in one way or another, that being Bill 162, which was a workers' compensation bill, and I spent a little bit of time on Bill 208.

Bill 162 went throughout the province far more extensively than this committee intends to. We were in quite a number more centres than the government is proposing we take this sweeping legislation to.

We have a problem with that. We think we should be out in cities like Samia, Kitchener, Hamilton, Barrie, Peterborough, perhaps Belleville, Timmins, North Bay, Sault Ste Marie and perhaps even Kenora, and those are cities that committees on bills like this usually go to. That's not something I've just dreamt up. The practice on major bills dealing with labour legislation is to go to these places to give the people of Ontario an opportunity to comment on them.

Our party is not happy with the fact that we are being restricted to two weeks, which obviously means we have a very short list of cities we will be able to go to. I am disturbed by that and I think all members of the committee should be disturbed by the fact that we are denying access to people from Timmins, for example. I don't think there are a lot of Timmins people who are going to come to Sudbury. I might be wrong, but I would guess that if we were in Timmins, there would be a lot more interest in presenting to this committee than there will be if they all have to come to Sudbury.

I look across at my friend the member for Cochrane North. His constituents from Hearst will have an amazingly interesting time coming to Sudbury for those hearings. "Yes," he says, "they'll come to Toronto." That's maybe a little easier for them, but still, from Hearst there's a tremendous expense. I know we'll cover the expense of the people coming, but in terms of time involved, people who want to present, small business people particularly, will find that is just not an option that will be as viable as if it were in a part of the province that was much nearer to them. So we have a real problem with that kind of thing.

Back on Bill 162, because I sat through virtually all of that committee, when we finished up there were 400 presenters who could not be heard. The New Democrats on that committee time and time again reiterated the position that everybody should be heard, and every speech on Bill 162 that was made by New Democrats after that committee rose hit on the fact that there were 400 groups and individuals who did not have the opportunity for this committee to hear them.

I want to remind members that by restricting ourselves to only going outside Toronto for two weeks we are opening ourselves to the criticism that the six members over there made—with a vengeance, I'll tell you. I find it passing strange that a government would not want to allow those people to come before this committee, and that's what's happening. I would be interested to hear the speeches in the fall when we get to doing this, and how they talk about the logistical impossibility of doing this and how members don't have the time to hear from the

400 people across this province; I'm sure we're going to hear that, because likely some of the people over on my side are going to say, "You could have worked a little harder to accommodate us."

I just want to bring that to the attention of the committee, because this is another classic example of "That was then and this is now." The former committee accommodated far more people and far more places, and the people had a lot more opportunity to put their views before our committee on what I believe to be a very contentious issue.

I'm not going to belabour the point, but I want to put on record that we are opposed to just two weeks across this province, because it does not give us the opportunity to hear from the folks who are going to be affected, whichever side of the issue they happen to be on. In my experience, all labour legislation in this province tends to be contentious, and that's fair enough, but particularly on contentious legislation I think we have a duty as legislators to accommodate as many people as we can. Certainly we're just not doing it by following this subcommittee report.

Having said that, I participated in the discussion of this subcommittee report, but I participated on the basis of a closure motion that dictated what we did, and I participated on the basis that on Monday last this committee made a decision that we would only be in the province for two weeks, spending the other three in Toronto. Having been part of the discussion this morning, I can't stall this—any more than I already have, I guess—but I just want to record for the record where we're coming from on this, because I don't think we're doing our job.

The Vice-Chair: Further discussion on the subcommittee report?

Mrs Witmer: I'd just like to register the concern of the Ontario PC Party regarding the start date of August 4. Unfortunately, we had hoped to give people in this province sufficient time to prepare their presentations, and we were looking at a startup date one week later. Certainly we're very concerned about the very short time that groups and individuals are going to have for making presentations.

We would've liked to have more time as far as hearings are concerned, but obviously that's not possible. I guess we're going to have to ensure that all the written submissions get as much attention as those that are presented verbally. Obviously, on an issue as contentious as this one, it's going to be impossible, whether you have five weeks of hearings or eight weeks, to ever accommodate all the interested parties. It's unfortunate that the government in drafting the legislation didn't use the tripartite consultation method, because as a result of not doing that, we now have a document that has certainly created a very adversarial atmosphere within the province and has generated a lot of interest.

As I say, I guess we will do our best to listen to all voices, and I hope that when we write our report not only will we have listened to people, but we will incorporate the views of all those who have made presentations. I hope we will be able to introduce some amendments, and I hope there will be deletions.

I hope people in this province will see that this committee was truly interested in listening and consulting, and I hope we're not engaging in a public relations exercise. That's been my concern from the start. If that's what we're doing, it's a tremendous waste of our time and of taxpayers' money, so I hope the final document we prepare will contain the views of all those making representation to the committee.

The Vice-Chair: Thank you, Ms Witmer. Mr Ward.

Mr Brad Ward (Brantford): Just a couple of questions, Mr Chair. With the August 4 startup of this committee to discuss the issue of labour reform, perhaps the clerk could, for the record, advise me of what the deadlines will be for people or organizations who wish to participate in the committee hearings, both to be in attendance at the hearings and any deadline for written submissions, which I'm assuming will come after the committee's on the road.

The Vice-Chair: I can do it or the clerk can do it. It was agreed on Monday that the deadline for requests to appear would be July 30, and that written submissions would have to be in by August 28.

Mr Ward: To request the possibility of becoming a presenter to the committee is July 30, and that has to be a formal fax or letter?

The Vice-Chair: A phone call or communication with the clerk of the committee. There will be ads, and the clerk can—

Mr Ward: The preparation of the list of presenters will be made by whom? I'm not quite clear on what the subcommittee's recommendation—

The Vice-Chair: It will be made by subcommittee. I believe we already have some we might be able to work on for the first week in Toronto, that have already asked for standing, but the subcommittee will sit down and iron out who is going to be selected and report back.

Mr Ward: So the subcommittee will be making a selection, is that correct?

The Vice-Chair: In the subcommittee report from today, item 3: "That the committee should not accommodate walk-in presentations; that late requests be accommodated if there are slots available; that if there are more requests than time available, then refer their request to the subcommittee, and that their request will be booked according to the chronological receipt of the request."

Mr Ward: That's after we've made our selection, correct? Or is that referring to the actual selection of presenters?

Mrs Witmer: Actual selection.

1550

Mr Ward: I have a bit of a problem with that. Just so I understand this, the presenters will be selected on a first-come, first-served basis, if we are listing on chronological receipt of the request. Perhaps you could clarify that for me.

The Vice-Chair: I apologize. I wasn't at the subcommittee meeting this morning, but when I read it, I do believe this is dealing with late requests.

Mr Ward: Just strictly late requests?

The Vice-Chair: Is it all requests?
Interjection.

Mr Ward: To move things along, that's the hint I inferred from item 3 as well as item 6, which seems to put a lot of decision-making in the Chair and takes it away from the committee.

I think this committee must prevail and make every effort to ensure that we have a balanced presentation. I know there's going to be some excellent presentations from all sides that have an interest in labour reform. I would hate to see a selection process be incorporated that would perhaps skew the presentations towards one side or the other.

I think it would be most appropriate, and I will be moving this amendment, that the subcommittee formulate the selection process and that the opposition have an opportunity to recommend one group or organization or individual and the government side have an opportunity to select an organization, group or individual. That would be the method to fill up our time allotments in each city, whether it's in Toronto or whether it's when we're on the road.

That, I think, would ensure a balanced approach to the presentations. It would take some of the stress from the clerk and possibly the Chair and deflect any criticism that could come from an unbalanced approach if the number of presenters is weighted on one side or the other.

I think that would be an appropriate amendment. It would ensure that the clerk could not be unduly criticized; the subcommittee would meet and simply go through the selection process based on the number of presentations that we receive.

The Vice-Chair: You are making an amendment, as I understand it, that the subcommittee sit down and negotiate, with separate lists or whatever.

Mr Ward: Based on the number of presenters we have, the subcommittee would make the selections based on the opposition selecting one, the government selecting one, the government selecting one, the opposition selecting one.

The Vice-Chair: I'm taking somewhat of a licence here and I know this, but having gone through the process, I've no problem with what you're saying in advance, but if we have people drop off, it becomes somewhat cumbersome to do that.

Mr Ward: I have no problem with item 3, which I thought would refer to the late requests or if people drop off. Then let's see who we can fill in.

Mr Brown: On that, first I guess I would appreciate a written amendment so that I really know what we're talking about. We discussed this issue at the subcommittee meeting this morning. It was my understanding that people would be slotted in on a first-come, first-served basis unless all the slots for a given location were full, and then the subcommittee would assist the clerk in apportioning the remaining names. Isn't that what we decided? Maybe not.

The Vice-Chair: It's unfortunate that neither Sharon nor Peter is here.

Mr Brown: I understand what Mr Ward is saying in that we do want a balance. The difficulty you have with achieving a balance in the presentations is knowing in advance on which side people are going to be. Sometimes it's relatively easy to predict. Other times, when you have an

individual's name, there is absolutely no possible way that you could predict what the person might say when he's before the committee, nor should we be in the business of trying to predict that, I would suggest.

We have some difficulty in prejudging the presenters and prejudging who's going to say what. Sometimes we may be surprised if we go through a process like that. For example, it may not be every union that is enthralled with this legislation; it might be, but it may not be. It may not be every business group that is totally opposed to this legislation; it may be, it might not be. We're making some judgements that I think are very, very difficult in terms of dealing with the presentations. If we start to do it by—Liz picks one she presumes, I guess, is a Tory; I pick one I presume is a Liberal and the government picks one it thinks is probably a New Democrat. I don't think that's a really useful way of approaching this.

Mrs Witmer: It's regrettable that neither Ms Murdock nor Mr Kormos is here to speak to the point Mr Ward has raised because actually, I guess Mr Ward—I started off on the same foot as you did this morning. I thought we should try to achieve some balance in presentations. However, in further discussion it was pointed out to us the dangers inherent in doing that. Also, it puts you in a position where you have to start asking people, "Are you for or against?" It puts the clerk in that position and it really is not fair to ask people that particular question. So we've left it up to first come, first served.

I think, if we try to orchestrate, we are going to run into some problems. If someone has already applied now and suddenly they're not able to make a presentation and then somebody two weeks down the line does, it's hardly fair to that individual. How can you really balance a presentation without asking people what side of the bill they're going to come in on when they approach the clerk? I guess we just hope there will be a balance there, but we're not sure we can orchestrate that balance. We're concerned with fairness and I think whenever people make presentations, those people who initiate action first and ask for an opportunity, hopefully will be given that opportunity and not be denied the opportunity in favour of someone who applies at a later date. I think we have to be very, very careful how we handle this. As I say, I wish Ms Murdock and Mr Kormos were here because I was persuaded away from the very argument you're suggesting.

The Vice-Chair: If you were to look at the monitor, you would see Ms Murdock is elsewhere at the moment. Any further discussion?

Mr Len Wood (Cochrane North): The proposal is being written out there. I think it should be fairly easy to take a look at the groups and the names of the people and come up with a balanced presentation because we're paying fairly good dollars. I'm sure the Liberals and the Conservatives are the same for research people out there who have a fairly good idea of which way a group, a company or a union is going to make a presentation. I think, with the phone system, the fax systems and the systems we have right now, we should be able to work out a balanced approach and not necessarily that the first week everybody who comes in is

opposed to it and the second week everybody who comes in is in favour of it.

With the amendment being brought forward—and Brad is writing it out there now—I think it's fairly easy to do that. We have three parties in the House and all three parties have been in government at one time or another, so I think people have a pretty good knowledge of what is happening in the field.

Mrs Witmer: Do you want the clerk to ask each person that applies whether he is for or against?

1600

Mr Ward: If I may clarify. Rather than have the clerk ask, "Are you for or against?"—because some people or organizations may be in favour but have some reservations with some of the labour reform. Others are in direct opposition to any reform, but may be convoluted in how they feel. Simply have the clerk take down the names of the groups, organizations or individuals. After the cutoff date the subcommittee meets, takes a look at the list and goes through a selection process, one for opposition and one for government, until all the time slots are filled in, at which time the clerk would then give notification to those groups and organizations that have been selected, "Here's your date, here's your time and we'll see you there."

The ones who could not be selected would simply, I assume, prepare a written submission, which would then be forwarded to the clerk no later than August 28. I don't think the clerk would be in any position to say who's for or against. It would be up to the subcommittee to decide which groups should be brought forth.

I would anticipate the vast majority we'd simply be able to tell and that's fine. But I think this is the only process that would ensure that we do have a balanced representation during our committee hearings. I would hate to think that simply because groups or organizations have the ability—because you said you'd take phone calls or fax machines, which the vast majority of people don't have access to—to make the phone call through the day or utilize a fax machine through the day, the presentations could be skewed one way or the other.

I think this is the only fair approach to really ensure that we have balanced representation during the committee hearings and it relieves the pressure from the clerk or from the committee Chair, because after all, it's the subcommittee that is selecting the presenters rather than the clerk or the Chair.

The Vice-Chair: If I could, I would like the clerk to respond. There is some concern, I believe, for at least week one in what you're putting forward, Mr Ward, and I would ask the clerk to respond to that.

Clerk of the Committee (Mr Harold Brown): If the advertisement for the bill goes in the paper on Wednesday, the cutoff date then is approximately nine days later and is one weekend prior to the commencement of the hearings. There is no doubt going to be some concern about the time periods that are involved, so that has to be considered, I guess.

The other thing that might be worthwhile mentioning for the benefit of the committee at this point is that any

organizations or people who have called our office or faxed their requests to us, we have recorded them in a chronological manner for the benefit of the committee and it would be available and can be available on a pull-up basis basically at any time. If that were pulled up prior to the end of next week, for example, and the subcommittee was able to reflect on that list, then that could be done.

Certainly, at any rate, it's the objective to remove the decision about the presenters' position away from our office and the selection of the witnesses away from our office except on a mechanical basis. That's what I think the subcommittee was driving at this morning, that it's done on a chronological basis and there's no decision-making on our part.

Mr Ward: Do you want my written amendment? Would that help?

Mr Brown: It would be useful, so we know exactly what we're trying to decide on.

Mr Ward: If I may—Mr Real Chairman.

The Chair (Mr Peter Kormos): Thank you, Mr Waters, for being such an excellent, as you inevitably are, Vice-Chair.

Mr Brown: He's superb.

The Chair: Excellent. Outstanding.

Mr Ward: Just to bring you up to speed, we pretty well have concurrence with the vast majority of the recommendations from the subcommittee. There's one concern I have and I'm moving an amendment that's now in writing, and I hope it's clear for all the members here, to address the concern I have and that is that "the subcommittee be directed to prepare a list of groups, organizations or individuals who will give presentations to the resource committee during the hearings on labour reform and that this selection process incorporate a system of one government selection, one opposition selection, one government selection etc."

The Chair: That's been moved as an amendment, and just to make that perfectly clear, what you're saying is that the subcommittee be responsible for doing scheduling. Is that correct? Is that the intent of that amendment?

Mr Ward: Yes.

The Chair: When you speak of one government choice, one opposition choice, one government choice, one opposition choice, do you want to clarify that, because I'll bet you—I'm not sure, but in view of the fact that casinos, who knows, could just be around the corner, I'll bet you the opposition parties are going to suggest that it should be government, opposition, opposition, government. What was your intent in the amendment?

Mr Ward: That it be government, opposition, government, opposition until the times are filled up.

The Chair: Do you want to speak to that? Mr Brown? Was my guessing good?

Mr Brown: Reasonably good, thank you, Mr Chair. I guess I would indicate a strong concern with this amendment. I think, first of all, we have to recognize this legislation came before the people of Ontario on June 4. Less than two months later, we're asking that people indicate to our clerk that they are interested in these public hearings.

That looks a lot like a steamroller to us already. It looks like stage management of the nth degree.

To give the indication to the public that we are going to stage-manage the presenters who come before us is just totally inappropriate. I would tell you that I really suspect that people in opposition to this bill who arrive under the system that is outlined here, not under the amendment, will be in the minority, because quite frankly my experience with labour bills is that they bring out union locals, which are generally well organized and have the ability to do that far better than people who might be opposed. I'm not saying that in anything but a factual sort of way, because in my experience with labour bills that's what happens. I think maybe Ms Witmer and myself would be wise to agree with Mr Ward's amendment. It would probably work out in the opposition's favour.

But I am totally opposed to the stage management of a committee hearing system, and that's what you're talking about. If we put forth the idea to the people of Ontario that we're going to only hear on political terms what they have to say—because many of them aren't New Democrats, many of them aren't Liberals, many of them aren't Conservatives. They're people that exist out there who have strong concerns, one way or the other, with this legislation.

I just find this totally unacceptable. The choo-choo just keeps rolling down the tracks here. I can't live with that.

Mrs Witmer: I'm totally opposed to this committee in any way attempting to orchestrate and determine who's going to appear. This is not a political issue. There are interested people in this province who want an opportunity to respond to this bill, and I do not feel I want to be involved in any way, shape or form in influencing any individual or any group concerning its ability to make or not make a presentation.

This is a province where we pride ourselves on freedom of expression and freedom of the opportunity to express yourself. If we're going to stage-manage these hearings, I don't even want to participate. I can't believe we're even suggesting we would do this. Personally, let people come forward if they have an interest. I'm not going to be involved in making the choices as to who appears and who doesn't appear.

If we're really concerned about fairness—and I hear that from the government all the time—I say we accept people in chronological order. To me that's the only fair position to take. I'm interested in hearing from everybody, whether they agree with the position I have or the opposition party has or the government has. I don't want to pre-determine what they're going to say and who I want to listen to. I'm appalled that we would even consider this.

The Chair: Before we go to Mr Klopp, then Mr Ward and then Mr Brown, let me please just mention that the approach in itself of caucuses in rotation sort of nominating participants isn't an unusual process in itself. It's well preceded. Mr Klopp.

1610

Mr Paul Klopp (Huron): Listening to this, earlier the honourable member for Waterloo stated that she wanted this process because of all the names or whatever that may

come in Toronto. The chronological order seems to be a little bit too rigid. The honourable member pointed out his argument that by rights we should be supporting this, and that's where I'm coming down the line on.

In my last bill that I was with, we had so many people who wanted to come and talk about the issue. It was the subcommittee that reviewed that issue, all the people who wanted to come in, and they had a chance to say, "Well, I definitely want this group or I definitely want that, or I don't care about this," and whatever.

Now maybe this part on here saying 50-50—I think I can see it leads to feelings of "for" and "against," which I find a little bit frustrating. I know when it was the helmet issue, which is maybe more important to some people, the subcommittee was responsible to go through the list, because there were so many, and say that some of them would be turned down just from the time allocation, which we've all run into on this point. Some say there are going to be hundreds left over who aren't going to be picked.

It was quite interesting. I just looked at the list, not being on the committee, and said, "Oh, this group probably might be pro-helmet." I happen to be a pro-helmet person and, God, they got to the mike and they hammered the ever-loving thing out of my pro-helmet. Then with another group I said, "Oh, boy, they're not going to be pro-helmet," or "They're going to be whatever," and they were the other way.

I think they need to have a subcommittee do this. I agree with that intent, because of whatever reasons people may have, so I'm going to support this. I'm a little bit leery that it's unfortunately 50-50, because it sounds bad, but I think, hearing all arguments, I'm going to be supporting this motion, the subcommittee review or whatever to look at this list of people who come in.

The Chair: Thank you, sir. Mr Ward.

Mr Ward: Just again to clarify, our whole intent here is not to stage-manage the process, but to ensure we have a balanced view during the committee hearings, and I think this is the only fair way to do it.

Now there may be an opportunity for the subcommittee, through consensus, to agree on who all the groups, organizations and individuals would be. In that case it doesn't have to go to your selection, our selection, your selection. If there can be consensus about who everyone is, that's great, but I just don't want, because someone doesn't have access to a fax machine, that he is denied an opportunity to give a presentation, when he may make an excellent presenter and give excellent views. I think this is the only fair way to do it. It takes the stress and strain off the clerk and off the Chair, and allows the subcommittee to work together to decide who the presenters will be.

If they can do it by consensus, that's great, and I think that's something they should be working towards, but we have to make sure we have balanced views expressed during the committee hearings and that as many people as possible have an opportunity. Simply because they didn't have access to a fax machine or couldn't get to a phone to call the clerk, they're denied an opportunity. I don't think that's a good process to follow, either.

The Chair: Mr Brown, did you still want the floor?

Mr Brown: Yes. I just want to reiterate the problems I have with this. I think at the meeting we had this morning there was an agreement that the Chair would come back and speak to us on any matter of substance that he thought was not just a trivial matter he could decide on himself. We're quite willing to trust the judgement of the Chair in deciding what is a matter of substance and what is just a minor matter of administration. If the Chair or the clerk has some problems in deciding who should appear, for example, I'm sure the Chair would want to convene a meeting of the subcommittee in any event.

I am deeply disturbed by the suggestion we do it this way. I've sat on committees where we've had too many presenters for the slots, and the subcommittee has come to some decision in a consensual way about who should be heard, rather than one party picking one and another party picking another. I find that to be just not acceptable in the spirit of the free democratic process. I don't think the public would accept that.

The Chair: Okay. Ms Witmer, you moved acceptance of the subcommittee report?

Mrs Witmer: I did.

The Chair: All six paragraphs. Would you consider moving that, but with the deletion of paragraph 3, so that all of the subcommittee's report is approved but for this issue that requests will be booked according to chronological receipt?

Mrs Witmer: I guess the problem I would have with that is, I think it is important that we resolve that issue. I'm not sure what there is to be gained by delaying if someone can convince me as to why we should not deal with that issue.

The Chair: Just a request, and it was denied. All right, there's still an amendment on the floor then, Mr Ward's amendment.

Mr Ward: Mr Chair, to attempt to appease some of the concerns that the opposition have, the amendment could be modified to direct the subcommittee to select a presenter based on consensus and/or—

Interjection.

Mr Ward: I just don't think—

Mr Brown: If there is no consensus, then we revert to the system you suggest.

Mr Ward: Yes. I'm just trying to appease your concerns here.

Mr Brown: Typically, if a subcommittee cannot come to a resolution of a matter, then it comes to the full committee for resolution. That's generally the way it's done.

Mr Ward: If you don't think that's enough to appease, well then fine. I'll stand by the original amendment.

The Chair: Are we ready for a vote on the amendment?

Mrs Witmer: I'm not quite sure now what the amendment actually says and the intention.

The Chair: The amendment replaces the final portion of paragraph 3—

Mrs Witmer: Starting where?

The Chair: —and that is that requests will be booked according to the chronological receipt of the request.

Mrs Witmer: Okay.

The Chair: The amendment is that the subcommittee will be directed to prepare a list of groups, organizations or individuals who will give presentations to the standing committee on resources development during the hearings on labour reform, and that this selection process incorporate a system of one government selection, one opposition selection, one government selection, one opposition selection.

Mr Ward: I stand by that.

The Chair: That's the amendment that replaces the subcommittee's recommendation of straight chronological order in terms of who applies. Yes, ma'am?

Mrs Witmer: I guess I would be voting against that amendment because I feel very uncomfortable assuming everyone in this province is either a Liberal or a Conservative or an NDP member. I believe this amendment eliminates the freedom of expression of individuals to make a presentation.

The Vice-Chair: Thank you. Mr Brown?

Mr Brown: I would ask that Mr Ward reconsider this and do some thinking. I think we're moving pretty quickly on what could be a precedent in committee in this place that I think all of us will regret. I can count, so I know that Ms Witmer and I are going to lose if we get this to a vote, but I'm saying to Mr Ward, I think you should reflect upon what you're saying here in light of some of your colleagues' comments that this may not be the way to go, and to give it some thought before we get to that.

I really have some difficulty. I believe this will look like stage management to the people of Ontario; it will look like straight orchestration. It will look like hearings of this Legislature are totally political events, rather than an opportunity of the people to come and tell legislators what they think. I would just ask Mr Ward—I can count, so we're going to lose if you go forward with this—let's just think about this for a minute before we go on.

1620

Mr Klopp: Just on a comment that one member made about Liberal, NDP or Conservative, I think the issue got blown into that. Maybe it was just the English language that we used in this motion, because it was felt that was a right way to go, to have a subcommittee making sure that whatever is brought forward—the issue we're dealing with is supposedly for or against the amendments to OLRA. Believe it or not, I have some Liberal friends who like the idea, I have some Conservative friends who like the idea and I have some New Democrats who were telling me, "No way."

That's why we made some amendments, because of that open forum. I think it kind of got blown into political realms that maybe it shouldn't be in. I guess that was my concern a few minutes ago. I believe that it should go to a subcommittee to go through the list. I believe this can be cleaned up a little bit. If not, then fine, I will support this, but I just want it on the record that I think it got shoved into a political arena when it shouldn't have.

Mr Wood: Just briefly, in the discussion it seems like there were two possible ways of resolving this, to eliminate some portion of the last sentence in paragraph 3 or to bring forth an amendment which would serve the same purpose. It's quite obvious that there's an unwillingness of the person who made the motion to allow for that sentence to be removed, so I think we should proceed with the amendment that has been presented by my colleague.

Mr Brown: I was hoping I could hear from Mr Ward. I urge Mrs Witmer maybe to reconsider the Chair's offer to consider this without that third point in the subcommittee report at this point. We can deal with the selection of witnesses at a later date in the subcommittee. It has always happened by way of consensus, so I really have a problem.

The Vice-Chair: I'm breaking the rules again, but if the Chair might take some licence, I'm looking at the monitor. Obviously, Ms Murdock is finished and she's probably waiting for her two minutes. I'm not sure, although this seems to have gone on for longer than two minutes. Maybe Ms Murdock could come down and shed some light on this.

Mr Brown: Perhaps, Mr Chair, we could take a brief recess.

Interjection: No, hold it.

Mr Ward: Mr Chair, my concern has been that I don't agree that it should be chronological order. Elizabeth originally refused, but if we can withdraw that, I have no problem. I suggested that the list go to the subcommittee and that it come up with the presenters. I don't care how the selection is. I said, "If there can be consensus, that's fine," but, Mike, you kind of shook your head there when I suggested that.

Mr Brown: No, no.

Mr Ward: If there can be consensus, that's great. I don't think the clerk's job should be to decide who's going to present. He gathers the list and gives the list to the subcommittee, and the subcommittee looks at the list and by consensus comes up with who the presenters are. That's great. If Elizabeth can withdraw that sentence in item 3, then we refer the list of presenters to the subcommittee for a final recommendation on selection.

Mrs Witmer: Then are you going to withdraw?

Mr Ward: I'll withdraw that one part of the amendment that causes concern, because I really think we can reach consensus on who the presenters are.

Mrs Witmer: That's fine.

Mr Ward: Does the clerk understand what happened there?

The Vice-Chair: I think I do.

Mr Ward: We removed chronological order, and the amendment would be that the final list of presenters be referred to the subcommittee for final selection. Right; is that okay?

Mrs Witmer: And that's all?

Mr Ward: Yes.

Mrs Witmer: Okay, I can live with that.

Mr Ward: And that it be consensus, hopefully.

The Vice-Chair: Mr Brown, do you have any comment on this?

Mr Brown: I think we can live with that also.

The Vice-Chair: Okay. Everybody has the same understanding, I hope? I see the clerk writing feverishly here, so I think he's coming up with some wording in particular, if we can just give him a second to get this down.

Mr Ward: Is this an amendment, Mr Clerk, that reference to—

The Vice-Chair: This is an amendment after you've withdrawn your other amendment.

Mr Ward: This is an amendment that the reference to "above order" be removed from the report and that selection of witnesses be referred to the subcommittee for final direction for scheduling. Does that sound fair? So the chronological order is taken out, my amendment's removed and—

Mr Brown: So I understand, perhaps we just end the sentence with regard to number 3 after "subcommittee," if you're reading the original—

Mr Ward: "...and that the list of possible presenters be referred at a subcommittee for final scheduling." Okay?

Mrs Witmer: That's okay.

The Vice-Chair: Okay, read once again what you want to insert.

Mr Ward: That reference to "above order" be removed from the report and "that selection of witnesses be referred to subcommittee for final direction and scheduling."

Mr Brown: After where?

The Vice-Chair: It would come in after "and" on the second-last line in number 3.

Mr Ward: That's moved.

The Vice-Chair: That's moved. Any further discussion on it? Do we have concurrence or do we wish to go to a vote? Concurrence? Agreed? Everybody's agreed.

We have one more item. There was some discussion at subcommittee on item 5, and the research officer actually brought in a sample of what Ms Murdock was talking about on that. I will turn it over to you two.

Mr Avrum Fenson: Ms Murdock remembered a very brief, chartlike summary, which I have found in the interim. It was prepared by one of my colleagues when this committee last year reviewed Workers' Compensation Board delivery. What she remembered was a sort of two-page summary based on 15 submissions. This committee is probably going to hear 200 or 300 submissions. Something on that scale is impossible, but I just wanted further instruction from the committee as to how complete a summary is wanted of the submissions it is going to hear.

I want to remind the committee that on hearings of this size, the summary of submissions is probably going to read something in the order of 100 to 150 pages, which may be too large to be of use to the committee in actually reviewing the proposals made on specific legislative changes. Does the committee perhaps want to instruct me to do something more compact, more usable?

1630

Mrs Witmer: You mean similar to this?

Mr Fenson: For example, if I could just pass these down, this is a typical large summary, and this is what Ms Murdock was asking about.

Mrs Witmer: This morning the subcommittee met and Ms Murdock suggested that we try to summarize concisely all the concerns that are presented, and you've brought along this summary. I would agree with her. I think it is an excellent idea. It seems to summarize the concerns and also the different groups that had those concerns. It should be quite easy to read for the committee and certainly I would support Ms Murdock's suggestion.

Mr Brown: The simpler the better, of course. I also recognize your concern that when we're dealing with the volume of presentations we may have, and who knows but we could be talking about 600 or 700 briefs, not necessarily presenters. There could be as many as 600 written briefs before this committee. It may be that this chart form, while excellent for a certain number of presenters, just isn't going to work for 600. I guess that's what you were telling us to begin with.

Mr Fenson: The standard large format attempts to identify virtually every specific proposal made. It also sets out, separately, proposals even when there are just minor distinctions between them. In other words, what it has turned out to be in practice is a record of who said what, rather than a clear access to what the different proposals are.

If the committee doesn't feel it needs a historical record, but rather wants a more compact working document, we can propose a change in the format. Our experience has been that the document has become too large by the time the hearings are halfway through for the committee to use it in a rapid and effective way.

Mr Brown: Are you saying you think it's possible to do one in a chart form that would be—

Mr Fenson: If the committee is willing to do without the function of the reports being a record which sets down exactly what every deponent said about every particular section in the bill, if they don't feel they need that historical record but rather want a clear and brief account of the changes, but don't really have to track each minor variation down to each brief, then we can do something more compact.

Mr Brown: I'm reluctant at this point to say we would be willing to do without the larger record, but I'm not the critic. I'm not the one who is going to be involved and I suspect you don't need to know today.

Mr Fenson: Oh no, not at all.

Mr Brown: Can we consider that for a while, Mr Chair?

The Vice-Chair: Definitely. I don't see that makes it impossible for us to agree on the subcommittee report. I just see it as a concern that was brought by the researcher. Indeed, if there is some way you could look at a way of giving us all of it, maybe in point form or something, to make it as small a package and as readable as possible, I think we would all be interested, but we don't want to miss anything at the same time.

Mr Brown: Yes

The Vice-Chair: Okay. We can leave that in the researcher's hands.

Mr Fenson: These instructions are consistent with either format. It's just that the committee wants to consider what scale of summary it wants and instruct me later. I would appreciate it.

The Vice-Chair: Any further discussion on the subcommittee report?

Mr Ward: Just a point of order about the sticking point with me on this selection of presenters. It's my understanding that the intent is that we will have achieved a balanced viewpoint as far as the presenters will be concerned. I need assurances that it is possible with the amendment I moved.

The Vice-Chair: When I look at this, what I read is that you have indeed referred that back to the subcommittee to do the final direction for scheduling.

Mr Ward: Yes, and out of that we will have a balanced viewpoint. Is that correct?

The Vice-Chair: Indeed, I believe the subcommittee can always come back to the committee as a whole if it has a problem in ironing out the list.

Mr Ward: Is that possible with the amendment we moved, that if there's a concern from one subcommittee member, whether it's a Conservative representative, a Liberal representative or a government representative, that concern can be addressed by the main committee?

Mr Derek Fletcher (Guelph): Is it coming back?

Mr Ward: Yes.

Mr Brown: Mr Chair, if I might be helpful, maybe I'm not, but in an attempt to be helpful, the way the subcommittee works is totally by consensus, which means all three parties have to agree. If any one of the three parties doesn't agree, then there is no report of the subcommittee and the full committee has to make the decision. It would seem to me that Mr Ward's objective therefore comes about by way of consensus at the subcommittee. Certainly the government, having more members than the opposition has the hammer.

Mr Ward: I just wouldn't want the Conservative member to think the Liberals and the NDP were ganging up on the Conservatives in the list of presenters.

Mr Brown: It's been the other way around lately.

Mr Fletcher: On a point of clarification, Mr Chair: On the subcommittee there are three members, one from each party.

The Vice-Chair: And the Chair.

Mr Fletcher: And the Chair, but the Chair has no voting rights.

Mr Brown: There is no voting in the subcommittee.

The Vice-Chair: There's no voting; it's by consensus. So indeed if we don't have consensus, then you go back to the whole committee, at which point the governing party has the majority of members.

Mr Fletcher: If there was not consensus, would that not happen on the first day of committee hearings? Or would there be a call of the Chair?

Mrs Witmer: That's a little too late.

Mr Fletcher: That's right, it is.

The Vice-Chair: The list will be decided long before committee hearings. In fact, the subcommittee will meet, maybe this week, to look at some of the people who have already applied to come before the committee.

Mr Ward: Another question: Prior to August 4 the main committee will know if there are any problems occurring with the selection.

Mr Fletcher: It has to. You can't go past that.

Mr Brown: My experience is, it's never as cut and dried as all that, and as we go through the process there are decisions subcommittees need to make in terms of presentations. In my experience, and I've chaired some committees with rather contentious bills before them, I have never had the experience that a subcommittee hasn't been able to do that. Given the fact you need consensus, all three parties have to agree, it is generally done and done in a way that everybody might not be pleased with but will find acceptable.

Mr Fletcher: My concern isn't so much that; my concern is, what if the subcommittee does not reach consensus and we find ourselves a week before the meetings are ready to start or something without consensus and we have to go through and come back to a special meeting of the committee? We're cutting right into a short time line and that isn't fair to the presenters in itself. I have no problem with the subcommittee making decisions; I just don't want to see us getting cut short and notifying presenters a week before that: "Sorry, you're not presenting now," or "We couldn't reach a consensus. You have a week to get your submission in," or what have you. That's my only concern.

The Vice-Chair: From the Chair's point of view, and in a quick decision here with the clerk, it's the first two weeks in Toronto where there might be some problem, where the time lines are going to be tight. Indeed, the very first week is going to be the most difficult one. After that, you have more time before we go on the road, and indeed the last week in Toronto, so it's a bit easier.

1640

Mr Fletcher: The reason for my concern is because of what I've heard from both opposition members, that this is a contentious issue. It's an issue that raises the ire of some members. I'm not sure how the subcommittee works. I really don't know if it works well or not.

Mrs Witmer: It does.

Mr Fletcher: Okay. As I say, that's something I don't know. If the bickering and the posturing begins in the subcommittee

Mrs Witmer: No, it doesn't. It's very friendly.

Mr Fletcher: I agree. It probably is usually very friendly, but on this issue, knowing that the opposition believes this to be the big issue of the year, it could start, not just because of trying to be mean to one another or

anything else, but because it is a contentious issue, because it does raise the blood pressure of some members. That's a possibility. I don't want to see a subcommittee that does work well all of a sudden not work well and have to come back and we get caught in a time frame.

Mr Brown: I can only speak from experience, but the experience is that subcommittees do work relatively well. They're not perfect. There are times when something breaks down and it is not what people might desire in terms of a nice clean process. Occasionally it does get back to committee, but often committees choose to deal with those matters outside of the public hearing time so that we don't have an interruption of the committee proceedings and keep presenters waiting for half an hour through what might be the lunch break in order to clarify a procedural issue.

Unfortunately, this is not always a nice, clean process. Most of the time it works. Occasionally it doesn't, but I don't think at this point we can make all these wonderful decisions when we've got a very—how should I say it?—flexible or fluid process that actually happens. To be fair, I don't think we can presume to know what's going to happen down the road totally. We have to be in a position to be somewhat flexible and adapt to the conditions that are there. Generally, committees have been able to do that.

Mr Fletcher: I understand that. Can I get a guarantee? You are on the subcommittee?

Mr Brown: No.

Mr Fletcher: And you're telling me how it works; I'm listening to experiences.

Mr Brown: I'll give you anything you want.

Mr Fletcher: Since we are going to work on consensus and since the issue is such a grand issue that does get people going, I would just like a guarantee that when it comes to picking the presenters the subcommittee will have a balanced 50-50 schedule. I would like that guarantee, not out of fear, not out of mistrust, but just so that I know that when people are presenting we don't have to come to the whole committee if there isn't consensus. If we have a 50-50 guarantee, then I can look at that and say—

Mr Brown: An understanding of a 50-50—

Mr Fletcher: Yes, an understanding of a 50-50 or a balanced approach. That would help.

Mr Brown: I don't think the opposition is in a position to give any guarantee about balance, because essentially the government controls this committee, not the opposition.

Mr Fletcher: I mean from the subcommittee.

Mr Brown: Yes, but if the government doesn't agree at subcommittee, it comes to committee and there you go.

Mr Fletcher: That's my concern.

Mr Brown: The opposition knows how that works. I'm telling you, it works. But to say "50-50" worries me. I'm not sure you can say it's going to be 50-50, because as the Vice-Chair pointed out, you're never quite sure what's going to come out of their mouths when they come before you. You can be surprised. What's 50-50? That would be a

highly unusual and new way of approaching the committee scheduling. I have confidence in the subcommittee functioning effectively.

Mr Fletcher: Me too.

Mr Brown: I'm in no position, and neither, I think, is any member of this committee, including the Chair, to give any guarantees, but the process tends to work.

Mr Ward: For my own comfort level, what I need is assurance that if one subcommittee member—it could be from all three parties—has a concern with the weight of the presenters, be it perceived or be it real, that concern can be dealt with by the main committee. Is that normal procedure, Mr Chairman?

The Chair: Nothing is normal any more.

Mr Wood: I'm just looking for clarification. I've sat on other committees where the opposition has had the chair of the committee. When there's no consensus in the subcommittee it goes back to the committee to decide. I'm under the impression that this is the way this committee will operate too: If there's no consensus, the government has the right to bring it back to the committee for a final decision on the issues.

Mr Brown: Or the opposition, for that matter.

Mr Wood: That's the only clarification I wanted.

Mr Klopp: Maybe what I want is clarification. On Bill 118, the energy bill, the subcommittee went through and picked the list. My sense was that it was a 50-50 balance. I wasn't in the subcommittee; it didn't come up when we had the meeting before we went on our road show, but there was a consensus reached. My colleague wants some kind of relative assurance, and if that can be here, so be it. On that very contentious issue, which I put at about the same as this, it did seem to come out that way. So how did it work there that we didn't have this big discussion?

The Chair: It worked well there. It went around the table in terms of caucuses, taking a name and putting it there. Somebody else wanted the floor.

Mr Daniel Waters (Muskoka-Georgian Bay): The last time I sat in subcommittee doing something of this nature, I sat with my friends opposite on the energy bill—in this committee—and we had no problem working out a process that made a certain balance so that indeed there was more than just one side, indeed there was somewhat a balance. We managed that in subcommittee without any problem at all. I don't see how it's going to change this time. I have no problem dealing with these things in subcommittee, because it seems to go much more simply.

The Chair: So you're speaking in support of this new amendment by Mr Ward, he having withdrawn the earlier one?

Mr Ward: We passed that one. We're just clarifying it.

The Chair: So you're speaking now to the subcommittee report as amended?

Mr Waters: At this point I'm trying to alleviate some of the concern of the members who may not have sat in subcommittee for this particular committee, resources development. We usually do not have problems in subcommittee with witness selection.

The Chair: The amendment obviously had been argued thoroughly before it was voted on under the able direction of the Vice-Chair, and I suspect somebody wants me to put the question now on the subcommittee report as amended.

Mr Brown: Didn't we do that?

Mrs Witmer: It's all done.

The Chair: The committee report's been passed? Then what's going on?

Mr Fletcher: Hold it. There wasn't a vote.

Mr Brown: Yes, there was, wasn't there, Dan?

Mr Waters: It was by consensus.

Mrs Witmer: We agreed by consensus.

Mr Waters: Sorry, Mr Chair. My mistake: We agreed on the amendment but we never really got around to agreeing on the report in its entirety.

The Chair: Your apologies are accepted. I suspect somebody wants me to put the question of the subcommittee report as amended, which is what I said a little while ago.

Mr Waters: I'm in total agreement, as amended.

The Chair: All in favour of the subcommittee report as amended please indicate.

All those opposed please indicate.

The subcommittee report passes, as amended.

Any other business? Mr Ward, briefly.

Mr Ward: Just so I'm clear in my mind about the list of presenters and how the subcommittee's going to decide, it's going to be by consensus; that in the very short time the subcommittee has to meet to decide who's going to present, especially for the Toronto hearings, if there is some difficulty the main committee will be meeting to ratify any concerns the subcommittee members have.

The Chair: The subcommittee will act in accordance with the report of the subcommittee which was just approved by the committee. You're quite right. Thank you. Any other issues? Okay, we're adjourned.

The committee adjourned at 1650.

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***Chair / Président:** Kormos, Peter (Welland-Thorold ND)

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Conway, Sean G. (Renfrew North/-Nord L)

Dadamo, George (Windsor-Sandwich ND)

Huget, Bob (Sarnia ND)Klopp, Paul (Huron ND)

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***Klopp, Paul (Huron ND)**

McGuinty, Dalton (Ottawa South/-Sud L)

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Offer, Steven (Mississauga North/-Nord L)

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***Wood, Len (Cochrane North/-Nord ND)**

Substitutions / Membres remplaçants:

***Brown, Michael A. (Algoma-Manitoulin L) for Mr Offer**

***Fletcher, Derek (Guelph ND) for Mr Dadamo**

***Ward, Brad (Brantford ND) for Mr Huget**

***Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Turnbull**

***In attendance / présents**

Clerk / Greffier: Brown, Harold

Staff / Personnel: Fenson, Avrum, research officer, Legislative Research Service



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(Hansard)**

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**Standing committee on
resources development**

Organization

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de l'Ontario**

Deuxième session, 35^e législature

**Journal
des débats
(Hansard)**

Lundi 20 juillet 1992

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développement des ressources**

Organisation



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 20 July 1992

The committee met at 1600 in committee room 1.

ORGANIZATION

The Chair (Mr Peter Kormos): It's 4 o'clock, which was the time scheduled for the commencement of this standing committee meeting. A subcommittee meeting was to be held at 3:30. Government members were present for the subcommittee meeting. Opposition party members were not present for the subcommittee meeting. At this point, government members are present along with a representative of the government whip's office, but no other members are present. With my apologies to the staff people who have sat here patiently for the last half-hour, we'll recess until such time as opposition members attend.

The committee recessed at 1601.

1615

The Chair: It's 4:15. Mr Waters is here, Mr Wood is here, Mr Huget is here, Mr Dadamo is here and Mr Ward is here. No other members of the committee are present. None has appeared since we commenced this meeting at 4 pm. Once again, I apologize to the staff who have been waiting here since 3:30, for 45 minutes now. Surely they had other things they could have been doing but were prevented from doing those things because they were here waiting for the subcommittee and then the committee meeting to start at 4. We shall wait and recess until more members appear. Thank you.

The committee recessed at 1616.

1622

The Chair: It's 4:22. Mr Waters is here, Mr Wood is here, Mr Klopp is here, Mr Huget is here, Mr Dadamo is here, Mr Ward is here. Staff people, the clerk, research and Hansard people, have been here since 3:30 this afternoon. Other than a brief attendance by Mr Offer at 3:45, when he indicated he would be returning to the legislative chamber and not staying here for the subcommittee meeting, there's been no other attendance, either at the subcommittee meeting scheduled for 3:30 or at the committee meeting scheduled for 4.

The clerk distributed written notices on Friday, July 17, to all members of the subcommittee indicating there would be a subcommittee meeting at 3:30 today, and did indeed fax to those people at noon today a witness request list. As well, all members of the committee received a committee meeting notice delivered to their offices advising them of a meeting at 4 pm today.

Are there any suggestions?

Mr Brad Ward (Brantford): Have we received assurances from staff that the Liberal and Conservative members of the committee did in fact receive written notice?

The Chair: There's no reason to question that. The Clerk's office delivered to all of the members of the

subcommittee and all of the members of the committee the written notices I referred to.

Perhaps we might ask the clerk to inquire of the whips' offices of the two opposition parties whether they intend to send people here today.

Mr Daniel Waters (Muskoka-Georgian Bay): I believe that would be an excellent idea at this point in time.

The Chair: We'll recess then to give the clerk an opportunity to do that.

The committee recessed at 1624.

1644

The Chair: It's 4:44. Mr Offer has been here now for almost a quarter of an hour. Mr Turnbull is arriving. We'll proceed with our meeting, which was scheduled for 4 pm. Mr Waters?

Mr Waters: I was just going to say that I had the assurances of Ms Cunningham that indeed a member of the Conservative caucus would be in attendance and, lo and behold, Mr Turnbull is here.

The Chair: Here we are. Let's move on to any business.

Mr Waters: Mr Chair, I'd like to put a motion on the floor that Mr Huget replace me until further notice as Vice-Chair and whip for the government caucus.

The Chair: And member of subcommittee?

Mr Waters: And member of subcommittee, yes.

The Chair: Any discussion of that motion? All in favour, please indicate. Opposed? Motion carried. Mr Huget?

Mr Bob Huget (Sarnia): As all members are aware, there was a subcommittee meeting scheduled at 3:30 today. The government members were present; the opposition members were not present.

Mr David Turnbull (York Mills): On a point of order, Mr Chair: I would put on the record the fact that the reason we weren't present was because there was the danger of some sneaky little trick from the government in terms of changing the hours, so we had to be in the House.

Interjection.

Mr Turnbull: When you're in third-party position you don't have the luxury of having that many members.

Mr Steven Offer (Mississauga North): On the same erroneous point of order, Mr Chair: I would like to inform you and all those who are in the room that the reason this committee probably would not be able to commence at 3:30 is that we had not finished routine proceedings. There were points of order, there were petitions, there were reports by committees, there were introduction of bills that had not yet been completed. It's my understanding that committees, even though they wish to start at 3:30 in the afternoon, still cannot start until those very important parliamentary procedures have been completed. Today,

because of a point of order and, I understand, the reservation of a decision by the Speaker, those matters were not yet completed by 3:30 in the afternoon. Hence, this subcommittee could not start at 3:30 pm because of the fact that those things that have been so important to this Legislature and its history had not yet been completed, unless you care to change the rules.

The Chair: The subcommittee was scheduled for 3:30 and the committee for 4.

Mr Huget: I appreciate the comments from the opposition member; however, at the scheduled meeting we were to decide witness selection and we are prepared to do that, from the government side at least. I'm convinced the subcommittee process will not work under the current conditions in the House, so therefore I have a motion that I will now table in terms of witness selection that will allow for a balanced representation of witnesses appearing before the committee. In order to achieve that balance, I am moving that 50% of the witnesses be selected by the government and 50% of the witnesses be selected by the opposition.

The Chair: Are you restricting that to a certain time frame or is this for the whole of the committee hearings?

Mr Huget: For the entire committee hearings.

The Chair: Motion on the floor. Any discussion?

Mr Offer: I just learned of this motion and I think it's an important motion that has been brought forward which will require some discussion. I would have hoped at the outset that the government member would have provided notice of a motion of the magnitude and import of this type prior to its discussion.

I think the member prefaced the tabling of the motion by indicating that he was convinced the subcommittee procedure of the committee would not work. If the member did not say that, I certainly will stand corrected, but I believe that is the premise under which that motion was made. Just by introductory question, Mr Chair, is it permissible for me in my opening comments to ask the member to expand upon what that opening comment meant, or is it rather more in keeping that I continue on?

The Chair: I'm inclined to let him respond to you, just by way of response to that issue, if that's what you're asking for. Mr Huget.

1650

Mr Huget: Thank you, Mr Chairman. I don't want to let it be misunderstood that I don't think the subcommittee process works, period. We arrived here today to discuss an issue in subcommittee. We cannot discuss that issue with ourselves, and given that there was nobody to discuss it with and that the pending start date of committee hearings is August 4, we quite frankly do not have a long period of time to let this drag on. So I think it's an issue that has to be dealt with and should be dealt with. If it can't be dealt with in subcommittee, sir, then it must be dealt with in full committee. We have very little alternative, given the August 4 start date, which is fast approaching.

Mr Offer: I'm well aware of point 2 of a decision made by the subcommittee last week. There were six decisions made by the subcommittee last week, and point 2

stated that the hearings be scheduled to commence at 1:30 pm Tuesday, August 4. So I think we're all well aware of that and we're all well aware of this report of the subcommittee of last week.

My question, though, was fairly straightforward. You premised your motion on the fact that it was your opinion as the new Vice-Chair of this committee—which I have some concern about—that a subcommittee on this committee for this matter would not work. I am wondering if you might be able to expand on why you as the Vice-Chair of this committee do not believe that a subcommittee of this committee would work.

The Chair: Please, Mr Offer. I appreciate that you were given an opportunity to have Mr Huget explain his position once. You're obviously speaking to the motion. He said what he said. Mr Huget may or may not want to join in the debate around the motion, but carry on with what your comments or arguments are about the motion itself.

Mr Offer: You don't wish to respond, then?

The Chair: No, I'm indicating that we can get into a long series of exchanges. Everybody will have the floor if and when they want to take it. Mr Huget may or may not want to take the floor. He may have said all he wishes to say about the matter or he may have a whole lot more to say about it. You're free to comment on it as you wish.

Mr Offer: Thank you very much, Mr Chair, and I certainly do have some things that I want to speak to on that motion. I was wondering if it is in order that a motion be made when we do not even have before us the written text of it. Is there some procedure that's required for a motion to be in writing, to be tabled with yourself, respectfully, as the Chair of the committee and then to be distributed before members of this committee so that we might be able to see the wording of this particular motion?

The Chair: That is certainly the desirable and preferable way to do business in the committee. However, I'm of the view that it isn't essential.

Mr Offer: Certainly I will abide by your ruling, Mr Chair, and I've certainly listened closely to what you have said, that it too seems to have come out of the blue as far as even the Chair of the committee is concerned. But that might be putting words in the Chair's mouth, which I do not wish to do.

I think that a subcommittee is essential. I think a subcommittee has to be able to work together to deal with the myriad of issues that come before any committee. I speak not only of the issue that we are going to be dealing with, Bill 40, but in general there is, I believe, on good principle and on sound fundamental principle, no question that there are a number of issues that come before a committee, issues such as scheduling, such as travel, issues such as witness selection in some cases, issues such as oath taking—issues that we, in this room, as of today's date, cannot even yet anticipate. Certainly we might have an idea as to some issues, but I think it would be presumptuous on our part to think that on today's date we are able to, in any real way, anticipate every issue that comes before the committee. A subcommittee is there to decide and to deal with those issues.

I understand that a subcommittee reports to the committee, but notwithstanding that, there is no question as to the need for a subcommittee. How I read your motion, if I had it before me, the dismantling of the subcommittee procedure for this committee is just totally unacceptable. It's unacceptable not only for this committee but I dare say for all committees.

We've dealt with some difficult pieces of legislation in the past; I think we'll deal with difficult pieces of legislation in the future. We've dealt with difficult issues before a committee, and there's no question of the worth, the need, the necessity of a subcommittee, members who have been specifically appointed to serve on this committee. It is, I think, a slap in the face, I respectfully say, to those who have served on subcommittees and those who will yet serve on subcommittees, that you, by motion, asked for the dismantling of this one in this committee.

Those are my opening comments on this matter. If there are any other people who wish to speak, I certainly will give up the floor at this point in time.

Mr Michael A. Brown (Algoma-Manitoulin): I'm a little interested that we're revisiting this very same issue I thought had been disposed of last week. I have a lot of concern with this and I expressed it last week, but I guess I'll express it again this week.

The first issue about the government and the opposition selecting witnesses: This to my mind is totally brand-spanking-new to the process around here. The process has always involved the subcommittee, which, as it sits, makes choices on the basis, I think, and quite fairly over the years, of making sure that the people of Ontario who wish to speak to a committee have the opportunity.

I find it offensive that a New Democrat will be out there putting on people who would support the New Democrats' point of view. I find it equally offensive that a Liberal will go out there to find a Liberal who is going to support the Liberals' point of view and a Conservative one who is going to support the Conservatives' point of view. That is not the way public hearings have worked in this province; it's never happened that way. We give out a message that this is what we're doing, even if it is not.

As soon as you start to choose, as the government party, the people you want to come before this committee and the Liberals start to choose and the Conservatives start to choose, what message does that give to the folks out there who don't particularly think they're New Democrats, Liberals or Conservatives but are just people who want to express a particular point of view on a particular bill? I ask you that. I think it gives the message to the public that the politicians of this province aren't interested in open public hearings. What they're interested in is having their own particular point of view, whether that be a New Democrat, Liberal or Conservative point of view, put before this committee.

We just become kind of stage managers, orchestrators, in a kind of circus that would go on here, rather than the true purpose of this committee or any legislative committee, which is to go out there and hear what the folks have to tell us. That's why we do it.

1700

Why would we advertise? Why would we spend the literally thousands and thousands of dollars we're about to spend to solicit people to put forth their views before us if those people are going to have to rely on the Liberal caucus choosing them or the New Democratic caucus choosing them or the Conservative caucus choosing them? My constituents—I don't know about yours, Mr Chair—would find that totally offensive. I think, Mr Huget, that perhaps you should revisit that.

As to the subcommittee not working, I don't agree. Last week the subcommittee met three times. All members from all caucuses were at each one. There was no undue delay. We discussed the matters that were before the committee at each and every opportunity. Eventually we thrashed out a document on how this committee was to operate.

Mr Waters, who convened the one on Thursday, I believe, said: "We've got a problem here. We'll meet on Monday. We'll talk about the lists. There haven't been enough people who've put their names in yet." All that kind of thing was understandable.

But to show up on Monday and say that because the House was tied up with routine proceedings longer than is normal—and that was the case today—to all of a sudden say the subcommittee isn't working is a giant step in logic. It just is. I don't know what time the routine proceedings of the House finished today, but they were very, very late and committees, as you know, cannot start before the routine proceedings are over. You would be violating the rules of this place.

Those are my preliminary comments. I would urge the member to consider the subcommittee process, because the subcommittee has generally met and has chosen the witnesses on the basis of making sure there is a balance in the views presented and that no one's view is going to be left out. This kind of authority where, "We'll pick one our ours, you guys pick one of yours," is just probably not on from our point of view.

Mr Ward: First of all, I'd like to correct Mr Offer's opinion that this motion dismantles the subcommittee. It does not dismantle the subcommittee. What the motion does is alleviate my original concern of last week that I felt that through the subcommittee process of consensus there would be problems developing, and it appears that that has happened. The subcommittee met on Thursday and there was no resolution of who the presenters would be for our committee hearings beginning August 4.

There was a scheduled subcommittee meeting for this afternoon at 3:30. The government side was in attendance; however, the opposition and the third party were not. As a result, no presenters were decided, because obviously the Conservative and the Liberal members were not in attendance.

My original concern, as a mover of the amendment from last week, originally was to allow a balanced approach to who the presenters would be; and that would be, to expedite the process, one selected by the government, one selected by the opposition and third party, and then one by the government etc until all the time slots were filled.

My concern is that if we do not pass this amendment more delays will occur. As a result, the presenters who will be selected will not have adequate time to prepare a presentation and the whole process will suffer.

I think this amendment expedites the process. It does not in any way infringe on the ability of a group or an organization or an individual to give a presentation because, in the end, they still have to be selected by the subcommittee, whether it was by consensus or by this amendment. Some groups, because of the time constraints, are not going to be present but will still be able to give a written presentation, provided it is in place by August 28, I believe.

We're not, I think, infringing or slowing down the process. What we're doing is expediting it to ensure that the groups or organizations or individuals who are selected will have adequate time to prepare their presentations. That's why I can support this amendment.

Perhaps if all members of the subcommittee had been in attendance at 3:30, this amendment would not have been necessary, but since that happened obviously we have to move along to the best of our ability.

Mr Turnbull: I sat on the subcommittee of the standing committee on general government, which reviewed both Bill 4 and Bill 121. While they were extremely contentious bills, nevertheless the subcommittee worked and at times was able to help the process along. The suggestion now that this subcommittee is not working is fairly offensive.

The reason that has already been stated as to why members of the opposition were not here at the time for the subcommittee was because routine proceedings weren't finished. Recognizing that all the members on the government side here weren't in opposition, they should still have some regard for the fact that the opposition does have a responsibility to the people who elect them. Essentially, their first responsibility and the whole genesis of the House rules and the idea of committees starting after routine proceedings is based upon the idea that their members should be available during question period and the rest of routine proceedings.

There was a fairly complicated and protracted discussion in the House as to the appropriateness of a guillotine motion the government introduced last week and it was appropriate that we maintain enough members in the House until that time. In fact, the very minute I could get out of the House, I came down here. So there was no suggestion of us deliberately holding up this committee.

The notion that in some way the subcommittee is not working is simply incorrect. It's unfortunate if we get off on this kind of footing on what I suspect might be fairly difficult hearings. We have to have trust that the subcommittee can arrange things suitably. We know the subcommittee does refer back to the whole committee.

I would respectfully suggest that it would be more appropriate if this motion were to be withdrawn. However, if it's still left on the table after this discussion, I suggest it would have been a lot more appropriate had we been informed of this very substantive motion prior to this meeting.

Mr Huget: First of all, let me make it perfectly clear, having served as Chair of this committee, having served

on this committee for quite some time and having participated in the subcommittee for quite some time, that I am somewhat aware of the importance and value of an effective subcommittee. As I stated to Mr Offer early in the conversation that's developed since the motion, I did not want to be misunderstood to say that the subcommittee could never work or would never work. That was perhaps an inappropriate choice of words on my part, but it certainly didn't work today in terms of trying to resolve an important issue.

As everyone knows, we have a tight time frame to work with. Therefore, the purpose of my motion is to do a couple of things: (1) to expedite the process and move towards meeting some very tight time frames, and (2) to make sure there is a balanced approach to the witnesses appearing before the hearings, and nothing other than a balanced approach. I believe it's a fair motion. It's one that ensures there is a very balanced, effective list of presenters.

I would have dearly loved to have been able to do that today during the subcommittee. However, as I also stated earlier, I could not do that among our own members. We needed the active participation of other people. While you refer to an important, pressing issue in the House, I also sit in the House, I also have a parliamentary responsibility, as do you, and I was here for the subcommittee meeting. I'm not trying to make an issue out of that, because to me it's really an aside.

But the motion is fair: The motion asks for 50% of the witnesses to be selected by the government and 50% to be selected by the opposition. In that way, I expect we will get a very balanced list of presenters throughout the committee hearing process. That's all my motion says.

Contrary to the comments of Mr Brown and Mr Offer and to a lesser extent Mr Turnbull, there is nothing in my motion that dismantles the subcommittee. I think that's a giant leap of faith or at least the product of an overactive imagination, to say that the subcommittee is being done away with. That concludes my remarks on the issue.

1710

Mr Offer: Seeing that no other government member wishes to speak on this matter at this time, there are a couple of points we have to put on the floor. Let me preface everything by indicating in the strongest terms possible that I take very strong issue with the comments made by Mr Huget and Mr Ward. I think they are the seeds of some real problems in the committee.

The first issue I want to talk about is the subcommittee not working. Mr Huget has alluded to it; Mr Ward has alluded to it. The fact of the matter is that when the Legislature is proceeding with statements by members, statements by ministers, replies to ministerial statements, question period, motions, petitions, reports by committee and introduction of bills, then committees and subcommittees cannot meet. Let's talk about some reality here. Today there was a point of order raised which lengthened that process. When that process, referred to as routine proceedings—routine because they are supposed to happen each and every legislative sitting day—is completed, then the committee starts to do its business.

It has been the practice that committees say they will meet at 3:30. That practice has arisen because that is an approximation of the time from which routine proceedings commence to their completion, with just a little bit of time left over to get into committee rooms. So 3:30 pm is really just some parliamentary usage based on past experience. I don't know if all members in this committee recall, but there used to be unlimited reading of petitions, if my memory serves me correctly, and that was used by opposition parties. That is not the issue I bring up at this point except to say that that was a situation where petitions were read, as was the right of any member, the result of which was that committees could not start, committees could not commence. They still had on their agenda that they would meet at 3:30—

Mr Ward: On a point of order, Mr Chair: Mr Offer is alluding to the fact that committees cannot meet till after routine proceedings. I'd like the clerk to clarify. Subcommittee can meet at any time, can it not? They are not bound by—

The Chair: You're on the list to speak.

Mr Ward: I just wanted to clarify that for Mr Offer.

The Chair: I appreciate that, and you'll have a chance to clarify that.

Mr Offer: I'm glad Mr Ward is going to be part of the debate again.

The fact of the matter is that in the time approximation as to the completion of routine proceedings, it is the sense that 3:30 would be a realistic time, but if there is something which takes places within routine proceedings which extends the actual time frame for routine proceedings, then committees cannot start, plain and simple.

That's always been the case and always must be the case, because if it weren't the case, then members would find themselves having to be both in the Legislature and at committee at the same time. It is the goal, I imagine, of all people that if we have duties to be in routine proceedings in the Legislature we will be there, and when those have been completed we go on to our committee duties.

So to say that the subcommittee of this legislative committee does not work because some members remained in the Legislature until the completion of routine proceedings is an interesting thought process. The fact is that members in this Legislature, I think, and I'm sure that all members in this committee as well as all members of the Legislature, feel that they should be there until the completion of routine proceedings, whenever they happen to be completed, and that was the situation today.

I make no comment on the point of order; I make no comment on the fact that the complexity of the point of order required the Speaker to reserve his decision—that Hansard will attest to—but it does provide the point and the evidence that this committee, as far as I was concerned, could not commence until our obligations as members in the Legislature in the area of routine proceedings had been completed.

There is another point I want to bring forward, that is, a point made by Mr Huget, who spoke about our reaction or overreaction to his motion, that it did not really entail the

dismantling of the committee but rather, for reasons of expeditious necessity, required a new way to select presenters to the committee.

I said at the outset that I have some strong concerns over the comments made by Mr Huget and Mr Ward, and now I will speak to that point by Mr Huget. You have no right to say that, and I'll tell you why you have no right to say it. If this motion was so darn important to you, if this motion was so important to Mr Ward, if this committee was dissolving or unravelling before your very eyes, then in the interest of just plain, old-fashioned respect to members of this committee, maybe some who sit on your side, I think you would have had the courtesy—just plain, old-fashioned manners—of sharing with members that motion, the wording. I still do not have it. Let it be known: I do not have this very important motion that you have placed before this committee today.

1720

We got a ruling from the Chair that it was not necessary, that when you look at the dotted i's and the crossed t's in our rules of procedure, it was not necessary to share that with members of the committee, but if it was so important to you, if it was so important to Mr Ward, then I would have thought, just out of some sense of courtesy as we start to debate what I think will be a contentious bill—but we have a role and a job as legislators—that the least you could have done is say: "I'm going to be making this motion. Here it is."

I know you're not obliged to do so by the laws of this committee, but there are certain other rules of good, old-fashioned courtesy of one member to another member. If it is that way that you wish to proceed, that courtesy is now out the window, that the type of notice you are going to give to members of this committee is only that which you're obligated to give under the rules, you will not build any cooperation here and you will be the author. It will not be members on this side; it will be you who will be the author and Mr Ward who will be the author of that type of difficulty, because it's always been the practice no matter where people stand on the issues. The issues in some cases—in this instance—are secondary to how members deal with one another.

Yes, this is going to be a contentious bill. I recognize that you've been a member for two years, but let me tell you that in the past it has always been the rule, though not enforceable, that members, no matter how contentious the bill is, deal with courtesy with other members. And let me tell you that this is not the first contentious bill that has been before a committee and, I dare say, will not be the last, but I do think—

Mr Waters: Come on, Steve. From here on in it's sweetheart deals.

Mr Offer: Mr Waters makes some flippant comments over a matter which is very important. It is my opinion that no matter how contentious the bill was—as I've indicated, I don't know and I don't speak with any evidence before me; it's just my feeling.

In my time here since 1985, I certainly can't ever recall this type of action taken by a member in a committee such

as this two or three days into its hearings. It's not that motions like this haven't been made; it's not that motions of similar controversy haven't been made. It is a sense of courtesy by members between themselves. With all due respect, Mr Huget—I know we've worked on other bills together and we've had sometimes a difference of opinion, sometimes not a great difference of opinion; we've always had opinions—I think you should maybe rethink not so much what you've done today but how it's been done and the impact it's going to have on this committee and on our members.

The last point I wish to make, again through my secondary comments, tertiary to follow—

The Chair: What comes after tertiary?

Mr Offer: I'm going back to preliminaries because I don't know.

I have some question about this balanced approach to the hearings. It's not so much an opinion but a question. Mr Brown brought this up earlier on. I had always been under the impression that you put an ad in a newspaper, there's an ad that floats out there in a newspaper, in community newspapers, daily newspapers—it's usually a decision made by the subcommittee—and the general public responds. They respond for a variety of reasons, but whatever the reasons are, they respond.

I don't think they want to feel they're stage-managed, and this just gives me a taste of the stage-managed. It raises for me the question of why are we putting the ads in the paper? If these things are to be selected, about which I have some very strong concerns—the government is going to pick one, the opposition is going to pick one; one, one, one, one—from whom are we picking? Why are we making these choices?

Mr Len Wood (Cochrane North): Let's just pass it through third reading.

Mr Offer: Mr Wood says, "Let's just pass it," let's just get out of these committee hearings and then pass it into law.

Mr Wood: That's what you're suggesting.

Mr Offer: No, as a matter of fact, I'm suggesting the very opposite, Mr Wood. I hope Hansard picked your comments up because they might be very helpful when we get to clause-by-clause.

I think committees, no matter what our political partisanship may be, whatever stripe we wear, must be responsive to requests by the general public. We are not here to conduct political partisanship meetings. I would hope public hearings are to listen to the public and hear the reflections of the general public on an issue which is of concern to them. I do not believe it is proper—I will be as strong as that—for committees to say, "This person is in favour of the bill, this person is against the bill, and we're going to divide it up 50-50." That might not be reflective of the general sense of the public.

No matter what our position has been on second reading, no matter what our political party affiliation—well, if you are going to run a sabre through the heart of the committee hearing process, there is no finer way to do it than the way in which you have just proposed. So I just have a

bad sense and taste over this: that we're not going to hear somebody in favour of the bill unless we hear somebody opposed; we're not going to hear somebody opposed to the bill unless we hear somebody in favour of the bill. That isn't what this committee is all about. That isn't what this should be about.

I see some members on the government side are shaking their heads, saying: "No, no, no, that's not what this motion means. It's not what we really want to do."

Mr Wood: You don't understand.

Mr Offer: Mr Wood, I would love for Hansard to pick that up. That brings me back to the point I already made. If you had had the courtesy to give us a copy of the motion, explaining what it was you wanted to do and why, then maybe some of our concerns might have been allayed, but I don't know that, because it is now 5:30 and I still don't have a written copy of the motion. I don't know if my colleagues in the third party or my colleague Mr Brown has one, I don't even know if members of the government have one. We still don't have a copy of the motion. If a subcommittee isn't going to work, that is the best evidence of that argument: You are not sharing an important motion with the members of the committee. Then your retort to my comments was that I'm reading the motion wrong. That's quite difficult because I don't have anything here to read.

1730

I know we have dealt on other bills, and I think on one other bill that we dealt with and grappled with, the end result, I believe, was the government and the Liberal Party voted in favour, and Hansard might show that we grappled with hard issues but we did it and we did it when we had full, free and open public hearings. We did it when members showed a courtesy to other members.

In the end result, we may not be able to agree on the bill. That, only time will tell. But I must say it causes me some real concern when motions of this import and this impact are made without informing members, dropping them from the sky and then expecting that this should be the framework of cooperation. It just doesn't hold true.

You wouldn't do it; there isn't a member on the government side. If we dropped down a motion and said, "This is a motion designed to enhance cooperation but we're not going to give you any notice of this," I have a feeling members of the government would say, "Where are you coming from?" and you'd be absolutely right. That's what this motion signified to me. It was a red flag, not that the subcommittee doesn't work but that the members on the government side are not prepared to allow it to work.

That is the completion of my remarks.

Mr Paul Klopp (Huron): Interesting comments. First off, I think the record should show that subcommittees are made up of one member—there are three political parties—well, they call it three political parties—in our Legislature. One of each is on a subcommittee. For them not to be able to meet after 3:30, I find a little bizarre. I think people in Huron county would wonder that three people, one from each party, couldn't get together, when I understand that a subcommittee decision was agreed to the week before.

Let's get back to the original meeting I was at a week ago. I do not think Mr Offer was there so I'll excuse him for not being there, but Mr Brown was, and a number of other people. It was decided there that the subcommittee would go through the list and if anybody had any problems, it would come back to the committee to make a decision. That was made quite clear. In fact, this idea of the government picking one group and then allowing the opposition parties to pick one person was discussed that day. I think it was generally accepted that if the subcommittee didn't work, this probably might happen here today.

Let's remember also that point about this picking. These are non-political committees and yet it seems Mr Offer kept bringing up political parties. So be it; that's fine with him. He's making the assumption that the Liberals would pick people, I guess, who are pro this bill and the NDP would pick people who are against this bill, or something. I don't think that was made at all. The situation is there was a list made. It was sent out by Mr Brown; I think that record is there. Then Mr Brown advertised—

Mr Brown: It was that Mr Brown.

Mr Klopp: The clerk: sorry; the clerk advertised. There is a list and it would be picked from, not for or against. Heaven knows, I've been on a committee where we had the helmet thing and who knows who's for or against it? If someone would have thought there were different people you could assume were for the helmet bill, you could never guess by the end of the day. So there's been nothing in this motion that says we're going to pick for or against. It very much will be picked from this list of people that was advertised.

I reiterate that it was made very clear by the committee as a whole to the subcommittee that if it could not come to a gentlepeople's agreement with regard to the list, "Bring it back to the committee, and by God, we'll deal with it." This idea was brought up and was given an opportunity to be put back on the shelf.

I understand the subcommittee tried to meet twice, and for whatever reasons, the other opposition members decided not to show up. It's pretty hard to have a meeting of one. Now today they were not there.

Mr Turnbull: It's just stupid.

Mr Klopp: Yes. They weren't here, and it's too bad that our regular member from the other wasn't there.

When we talk about treating each other fairly, this was discussed at committee as a whole. The subcommittee was not able to meet. Talk about unfairness. Surely one of the opposition members could have sent one of their staff down to say: "Listen, it's 3:30. I know we made an agreement to meet but we're going to have to hold up." In fact, this committee sat here till way after 4, waiting for someone to show up.

I think in all fairness Paul Klopp can support this motion.

Mr Ward: Just briefly; I think we've debated the issue here. I don't know about the third party. My understanding is that subcommittee members had an agreement to meet at 3:30. When I came down here at 4, I fully anticipated taking a look at the list of presenters for the

first week, which the subcommittee would have discussed and reached a consensus on. That was my anticipation.

I was shocked when I came down here at 4 to find that not only were the government members the only ones in attendance, other than the staff who had been here since 3:30, but that the subcommittee did not meet simply because our member was the only one in attendance for that as well. This leads to great dismay and concern, because I want to be fair to the presenters. It's important they be notified as quickly as possible of when they will be allowed to give presentations, whether it's here in Toronto or on the road. We have to show courtesy to them.

As far as this amendment or resolution not being relayed to the opposition parties is concerned, there wasn't anyone here in attendance until around 4:30 to tell that this was the motion we were moving. We on this side of the table didn't realize that the subcommittee process wasn't working until I got here at 4; I'm assuming my colleagues were here at approximately the same time. That is when this motion was developed.

I'm not sure how long we're going to debate this, but I think we should be calling the question very soon. It's my understanding that with this motion—perhaps the mover can clarify this—the subcommittee would then meet and select the presenters based on the process that is outlined in the resolution.

Mr Wood: Today, question period was finished at 3 o'clock, and within a few minutes after 4 o'clock, Bill 75 was being debated in the House, so it was quite obvious that nobody came down from either the third party or the official opposition to explain why they weren't going to attend a subcommittee meeting and why they were going to be 30 or 40 minutes late for a regular meeting of the on resources development committee to deal with what should have been dealt with in the subcommittee. From 3 o'clock until 4 o'clock, sure, there were points of order in the House, which were probably stalling tactics or whatever.

I support the motion that has been brought up, because the only impression we have when we're sitting here by ourselves is that there are further stalling tactics on the part of the official opposition or the third party, when we know for a fact that question period was wrapped up at 3 o'clock and Bill 75 was being debated in the House shortly after 4 o'clock. Hansard will correct me if I'm wrong, but I believe it was about three or four minutes after, at the latest 10 after 4.

With that, I'd just say that I'd like to support this, because I think it's a very good bill. It's a bill, Bill 40, that the people want passed as quickly as possible, after debate and presentations and any amendments that are there. I know there are a lot of people in my riding and throughout northern Ontario who are saying this should've been passed within the first few months of our mandate to govern the province. We're up to about 21 or 22 months now and it's time we get it out on the road and get the presenters picked and get the committee working.

1740

Mr Huget: On a point of clarification: First of all, I think it's clear that the motion states that 50% of the

witnesses be selected by the government and 50% by the opposition members. That in no way diminishes the role of the subcommittee, as there are government members on the subcommittee and opposition members on the subcommittee. It is my view that we have debated that issue long enough and I'm calling the question.

Mrs Dianne Cunningham (London North): Thank you for the opportunity. I'd at least like to explain why we weren't here and how I feel about it.

I think there's a lot of pressure put on subcommittees when they meet just before standing committees. I've certainly found that over the years. I've also found that subcommittees are quite informal and that the time they meet changes frequently. Three of us, on the one subcommittee I sit on, would arrange to meet after routine proceedings. We often wouldn't meet right away, but we're usually pretty patient about it, meeting in one of the lobbies. It's a very informal thing, a subcommittee, and if you have to have any non-partisanship, it would be in that regard.

There has been some difficulty, I think, with the subcommittee meeting on time anyway. I was certainly at the first meeting, and Mrs Witmer and I think Mr Turnbull were at the second meeting. In our party, there would only be three of us who could be at the subcommittee meeting. Obviously, Mrs Witmer is the one who would be responsible for the legislation as critic and we wanted her to have the most input. She had difficulty being here the first day, and in that regard it's been up to myself, as the whip, and Mr Turnbull, to sub in, because we try to keep ourselves organized.

I have to say right now I think this lack of understanding today is indicative of what's happening around this place right now. If anybody thinks things are going to happen according to the norm, they're not, because too many things are taking place and a lot of us just simply shouldn't be here. Many people are very tired. They're not thinking the way we would normally be. I think there's a total lack of enthusiasm for the work of this Legislative Assembly on many people's behalf. The truth of the matter is that we are here, and we're continuing as best we can. I think it's unfortunate that there may or may not be a break before the committees sit.

I think probably if the subcommittee had sat and I had been there, the first order of business for this standing committee would be that the meeting be adjourned, because there's no way the standing committee can make any decisions right now with regard to any of the witnesses until the House decides when and if we're going to have public hearings on Bill 40.

We've decided informally among ourselves, and I speak as one of the whips, that there will be the five and two, and until we all agree when that will happen, as the whips, and we can't agree to that because we don't know when the House will adjourn—

Mr Waters: Five and two?

Mrs Cunningham: Five, I think, of—what is it, clause-by-clause?

Mr Klopp: Three, two and two.

Mrs Cunningham: I meant five of public hearings on the bill and two of clause-by-clause.

I can just tell you right now that until we get some guidance from the House leaders, we can't sit and put on paper—although we've got a plan that's tentative, because we wanted to get a lot of the work done—when these hearings can even take place. That's a fact.

We have a meeting tomorrow, and again we'll have to be flexible on it, to take a look at the possibilities, but there's nobody in this room right now who knows when this House will adjourn, unless the government does, and if it does, tell me, because I'd like to make some plans.

Mr Hugot: Me too.

Mrs Cunningham: Yes, probably you would too, Bob. But the point is, I don't think there was any purposeful reason for missing the subcommittee meeting.

With us, it was very clear. We weren't certain what the government would call as the next order of business. You called Bill 75, and when you did, that certainly changed whether I could be present or not, and it changed whether Mr Turnbull could be present or not. It happened to be the city of London bill, so I had to scurry about getting my work ready, and until the end of routine proceedings, as the deputy whip, he had to be in the House, so that's why we weren't here. We just assumed the normal cordial relationship would exist and that we would come down as soon as we could. One of your members in fact did come up and say, "Are you coming down?" I kept thinking you'd be watching the clock like we were and we'd be there as soon as the routine proceedings were finished.

It was as simple as that. There's no motives; there's nothing. We just have to have so many members in the House, as you did. You got caught once on a Thursday morning, and I got caught, on behalf of our party, on a Tuesday evening, and it's the way it works. That was my job at the moment, and I think there has been a great deal of respect.

If this has come before your committee right now, I think it's not a good precedent to set, Mr Chairman. I would urge that the committee say that you haven't got enough information. I'd certainly like to see the list before we decide. My guess is that the motion isn't unreasonable, as far as I'm concerned. I'm sure the notice hasn't gone in the paper—you could correct me on that—because we couldn't put a notice in the paper until we have the dates. Could I have a verification of that?

The Chair: I'm advised that the notice has been distributed for publication, as was agreed to by the subcommittee and then the committee.

Mrs Cunningham: What did you do with regard to dates then?

The Chair: There were no specific dates. It was indicated, basically, at the upcoming meetings. Very specifically, it was indicated that the hearings will take place during the summer adjournment 1992 and will be held in Toronto and other locations to be determined.

Mrs Cunningham: As long as everyone's still smiling and understands that summer adjournment may not be

summer adjournment. But the point is, I think the ads then will just be appearing this week. Is that correct?

The Chair: We expect them to.

Mrs Cunningham: Yes. Okay. I think then my point is made: that the ads haven't appeared and people haven't been given a chance to phone in, so we really don't know what the list does look like.

Mr Huget: Yes, we do know. I'm sorry. We do know now.

Mrs Cunningham: Don't flag this to me as the list when there hasn't been an ad in the paper, because that means most citizens don't know about it. These basically are interest groups that have been contacted. I think one out of three would be interest groups that have been contacted, and I have to tell you that the others are major groups, such as chambers of commerce and the home builders' association and municipalities and large groups. I'm looking to hear some of this, but I'd certainly like to hear from workers and individuals who are going to tell us about this labour law. That's who I think all of us are interested in hearing from. Until I get a better idea of who's coming—you and I could have written this one in our sleep, except you got even more than I expected you would without advertising.

Mr Huget: More sleep?

Mrs Cunningham: Yes, that's right. Bob asked, "More sleep?" No, more groups.

I'm just saying that I think, as a precedent, I wouldn't like to see you, Mr Chairman, hold a vote on this motion. We're having a meeting tomorrow, and I would certainly like the opportunity to ask my caucus colleagues if they think this is fair. My view is that it probably is, but I don't know how they feel.

Perhaps since it's 10 to 6 we could adjourn the meeting and let the subcommittee reasonably have a meeting and make a recommendation to the standing committee, because I don't think this committee that has worked so well wants to be accused of breaking the rules. Maybe I shouldn't give you a chance to get off the hook like this, but there's no way we can deal with it. There's no reason to deal with it today and there's no reason to break the rules and the good working relationship that we've had. So perhaps I'd save everybody a big concern if I could just move to adjourn the meeting.

1750

The Chair: Thank you, Ms Cunningham. Sadly, I can't accept your motion, because you don't have a substitution slip to the committee. A member of the committee can make a similar motion.

Mrs Cunningham: Maybe somebody else would do it, because I think, in good faith, that's what should happen.

The Chair: That might happen, but next on the speaking list was Mr Brown. Mr Waters wanted to respond very quickly to a very specific area of concern raised by Ms Cunningham.

Mr Waters: Yes. In the area of the witness list, what we had talked about last week was doing the first two or three days, because of the lack of time, so that those

people would have a chance. If we even did the first two or three days it would give the first groups a chance to get themselves organized to come before the committee. Because of the timing, there will only be about a week for these people to respond before they have to come before the committee, and it's over a long weekend otherwise. So that was why we had looked in subcommittee and in committee last week at having at least the first couple of days of people who wanted to make their presentations come before us and make that draft now.

The Chair: Do you want to reply briefly to that?

Mrs Cunningham: I appreciate what Mr Waters is saying. I was there when we had that discussion, so I have no problems with that. In fact, I probably don't have any difficulty with the motion, but I would like to have an opportunity to discuss it with my colleagues. Some of them may in fact have some difficulty with it, and if they do, I think you should hear about it. That's our job here, as we represent our colleagues and as we try to make some rules.

The other thing I'd like to add, and you'll appreciate this one, so don't look with such disdain, Mr Chairman—

The Chair: That was not a look of disdain; that was a look of amazement.

Mrs Cunningham: You shouldn't be amazed. You know me well.

The Chair: But you never cease to amaze me.

Mrs Cunningham: I know. The unions were very much against Sunday shopping legislation, and the Chairman will remember this, but we did not, as a standing committee, give any order to the subcommittee. We just gave the direction to the clerk's office. So just keep in mind that we're setting somewhat of a precedent here.

I'm not certain that we've ever done this before. You might want to look into that. I just don't know why we're doing this. If you're going to do it, why put it on the record? Isn't that something the subcommittee can decide? I don't know why you'd want to put that on the record.

Normally what we do is take a look at major groups, and they get more time than individuals. But I believe we've already had that discussion and we've decided that everybody's going to have half an hour. In fairness, that's your influence, Mr Chairman. That's the way you feel, and because you said it and you're the Chairman, I think there was some regard for your opinion. On my part there was, because I like one hour for the groups and half an hour for the individuals, so I did give you the benefit of the doubt with your experience and say half an hour. If we're going to have a lot of individuals, I'm not sure whether that's very wise, but anyway I'd certainly like to put that on the record.

I did make my points about why we were late, and it was in no way that we wanted to impede the work of the subcommittee. I'm just finding it very difficult right now to have a subcommittee on time, but I must say I do anyway, even during the regular session. There's a lot of leniency, I think, with regard to it, at least within half an hour or an hour.

Perhaps we should have sent somebody, and I apologize for not doing that. I just didn't think about it, and we had other things on our minds. But you're quite right; it's

bad manners not to send someone. It was a hard thing for me to get the message out too, because we are lacking in pages. I don't know how my colleagues feel about this, but I don't like asking a couple of the more senior members of the staff to take notes. Maybe I should be more aggressive about that.

Thank you for the opportunity to respond to Mr Waters in my usual concise, long way.

Mr Brown: I come back to the premise behind this issue. The premise is that the subcommittee on this committee is not working.

I was at the subcommittee three times last week. There were representatives of all three parties, and occasionally one of the members of the subcommittee would be a little tardy. As a matter of fact, I think I was once. But there were other members who were a little tardy, and that's not because members aren't punctual people. There are a lot of other things going on, Mr Chair, and you know that and all members know that. There was no machiavellian reason for members to be late.

On Thursday last, we were called to a subcommittee meeting. You were there, Mr Chair, Mr Waters and Ms Witmer, and we were going to decide this issue. The committee came to a consensus which all members of the committee agreed to last Thursday: that it was an impossible task and that we would put that off until today. That's what was decided. The committee had decided that.

So we come down quite prepared to discuss the subcommittee matter and are told: "Well, you're too late. If you're late once, that means you're being uncooperative. That means this is how we'll do it."

Mr Chair, I find that to be a little bit unacceptable. I will tell you, I chair a committee in this place and have had some experience in chairing committees. You will be happy to know that on three separate occasions concerning a recent report of a committee, the subcommittee didn't manage to sit for three weeks because one particular member did not show up at any subcommittee meeting over those three weeks. It happened to be a government member. Now, I know he was a busy man and I don't find fault, but it stopped the committee from sitting for three straight weeks. The last time he was all apologies; he forgot about the meeting and had gone for an ice cream cone down the street. That is not a particularly good reason, in my view—that he just forgot about the meeting and went down and got an ice cream cone.

The Chair: Unless it was an exceptionally hot day.

Mr Brown: It was fairly warm, Mr Chair. The problem I have with that is, that in itself is no reason to say the subcommittee isn't working and just to throw up your hands and say, "Oh, my goodness, we can't come to a conclusion," because it was inadvertent. I don't impute any motives to the member who couldn't come; he actually did forget, and that was okay. In the scheme of things and the way this place works, sometimes things like that happen.

I'm trying to find out from Mr Huget where the evidence is that the subcommittee isn't working. I can't find that evidence. I don't know why he would come to the conclusion, particularly because he's just brand spanking new at this job. He wasn't here last week. Mr Waters was doing a very admirable job for the government back then. A new day, and you come in. He must have got some marching orders. Did you get some marching orders, Bob? "We're going to steamroller this through regardless of what everybody thinks." That's the conclusion that maybe somebody looking at this from the outside might come to, or maybe that Mr Waters was, in the view of Mr Cooke, not ramming this through and was actually looking for some consensus.

The Chair: It's just shy of 6 o'clock. Subject to announcing a subcommittee meeting tomorrow at 3:30, or upon completion of—no, at 3:30—

Mrs Cunningham: No, because I'm up speaking.

The Chair: Wait a minute. Excuse me. A subcommittee meeting at 3:30, subject to what the members of that subcommittee may choose to decide upon the completion of this meeting tonight.

Mr Klopp: Mr Chair, we just had an argument for three hours about a 3:30 meeting that the opposition members use as an excuse not to show up at.

The Chair: One moment, please. I said I'm announcing a subcommittee meeting tomorrow at 3:30, or at such other time—

Mr Klopp: Oh, I didn't hear you, sir.

The Chair: —as the subcommittee may decide immediately after this committee meeting is adjourned. This committee meeting is adjourned until Wednesday at 3:30, or upon the completion of routine proceedings, whichever shall be the later.

The committee adjourned at 1800.

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Substitutions / Membres remplaçants:

- *Brown, Michael A. (Algoma-Manitoulin L) for Mr Conway
- *Ward, Brad (Brantford ND) for Ms Murdock

*In attendance / présents

Also taking part / Autres participants et participantes:

Cunningham, Dianne (London North/-Nord PC)

Clerk / Greffier: Brown, Harold

Staff / Personnel:

Anderson, Anne, research officer, Legislative Research Service
Fenson, Avrum, research officer, Legislative Research Service



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Second session, 35th Parliament

Official Report of Debates (Hansard)

Tuesday 4 August 1992

**Standing committee on
resources development**

Labour Relations and
Employment Statute Law
Amendment Act, 1992

Assemblée législative de l'Ontario

Deuxième session, 35^e législature

Journal des débats (Hansard)

Mardi 4 août 1992

**Comité permanent du
développement des ressources**

Loi de 1992 modifiant des lois
en ce qui a trait aux relations
de travail et à l'emploi



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

Published by the Legislative Assembly of Ontario
Editor of Debates: Don Cameron



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 4 August 1992

The committee met at 1330 in room 151.

LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

The Chair (Mr Peter Kormos): It's 1:30 and we're going to start. There is a report of the subcommittee as a result of a subcommittee meeting Wednesday, July 22, 1992. All members have a copy of that and a copy has been tabled with the clerk. Mr Huget, do you move acceptance of that?

Mr Bob Huget (Sarnia): Yes.

The Chair: All those in favour, please indicate. Opposed? Carried.

There is a motion on the floor. Are you withdrawing that motion?

Mr Huget: I'm withdrawing the motion.

The Chair: Thank you.

It is my understanding that there is unanimous agreement by the committee that the committee will commence at the times indicated in this agenda so as not to inconvenience persons participating, notwithstanding the fact that one or more members of the committee may not be present. Is that correct? That's unanimous.

Mr Mackenzie, Minister of Labour.

Hon Bob Mackenzie (Minister of Labour): Good afternoon. Today marks another important step towards updating Ontario's Labour Relations Act. I am pleased to take this opportunity to sum up the essence of Bill 40, highlight its major features and formally launch this period of public review.

The driving force behind this legislation is the need to update the Labour Relations Act to reflect the new realities of the workplace and our economy. Ontario has much to offer and we need to build on these strengths and successes. We need to allow women, part-time workers and new Canadians the same workplace choices that other workers already enjoy. We need to work together to meet the daunting economic challenge of the 1990s. To achieve this, it is clear that labour and management must work together in a spirit of cooperation, partnership and trust. Economic growth must come down to more than choosing between jobs and justice.

In Ontario we have many options and strengths to work from to achieve the twin goals of equality and security through economic renewal. We have a talented, loyal and skilled workforce in this province. This is an important

resource. It should be supported, nurtured and allowed to flourish. We have a standard of living that is among the highest in the world, and we have an educational system that is among the best in the world.

The question is simply this: In the face of a sometimes brutal and competitive world economy, how do we maintain this quality of life and extend it further to include all Ontarians? How do we continue to attract our share of highly skilled, high-wage jobs to our country? Do we have to give up all we have achieved, including all the defining qualities of Ontario's social network, in order to work for companies that will pay 65 cents an hour? Is this really an economic strategy that the people of Ontario would settle for?

Our government's strategy for economic renewal recognizes that we have options, which stem from the partnerships we are trying to cement in Ontario's workplaces. One of the most important is training and developing the skills of our workforce. This year alone we will invest more in this area than any previous Ontario government.

We have gone to great efforts to promote sectorial opportunities for training and labour adjustment. Building on this, we will create the Ontario Training and Adjustment Board, a bipartite board which will guide our future training and labour adjustment activities. We also intend to stay on top by seeking and encouraging investment at every opportunity. That's why, for example, the recent budget provided tax breaks for small businesses and reduced corporate tax levels. The industrial strategy announced by my colleague the Minister of Industry, Trade and Technology last week will further this commitment to the province.

This government has also launched a five-year, \$2.3-billion Jobs Ontario Capital fund to maintain and enhance Ontario's current infrastructure edge. Other important measures, such as pay equity and employment equity, will ensure that future economic growth in the workplace takes place in an atmosphere of equal opportunity for all.

Finally, economies that have already moved into the 21st century have managed to bring labour and management together to work for the greater good. Ontario deserves no less. The old adversarial system is obsolete. Involvement, cooperation and partnership are the keys to success. That's why this government has no less than five agencies, councils and task forces made up of business and labour representatives to discuss short- and long-term economic strategies for the province.

Ontario's economic success will depend to a large degree on the extent to which labour and management maintain this dialogue and really bring it into the workplace. One of the time-honoured ways for working people to conduct this dialogue is through representation by a trade union. It is certainly not the only way, but many workers have determined it is the best way to obtain job security, protection and confidence in the future. With these conditions in

place, many workers feel more confident and secure about discussing important workplace issues. They feel valued, involved and committed. They have an interest in cooperating and working together with their employers for success.

That's why the indiscriminate attacks on the millions of trade union members, citizens of this province, by opponents of this bill have really saddened me. I believe it is more constructive to look at the growing evidence that union-management workplace cooperation can have a positive effect on productivity, not to mention other benefits which include more efficient management practices, reduced turnover, better training and increased investment in new technology.

It's true that important strides in cooperation and trust have been made by certain progressive companies and trade unions in the areas of retooling, training and skills development, and the introduction of new technology into the workplace. We believe these ground-breaking achievements have to become the norm if Ontario is to survive and prosper. That is why updating our labour law forms a significant element, along with the other measures I have already mentioned, in the government's agenda for economic renewal.

Bill 40 comes to this committee containing amendments to achieve four major goals.

They are, first, updating the act to recognize that Ontario's workforce and workplaces have changed dramatically. The act needs to take account of the growing numbers of women, workers in ethnic diversity and part-time workers in our economy whose numbers alone have doubled in the last 15 years, and I might say, in largely low-skilled, service-sector jobs. Right now these workers face many obstacles to organizing and effective bargaining because the act is designed for a now-vanishing era of large smokestack industries employing predominantly male workforces.

The second goal is to promote greater cooperation and harmony in the workplace between labour and management. Measures in this area will allow for greater ongoing discussion of key workplace issues on a number of formal and informal levels.

The third major goal of these amendments is to reduce the level of industrial conflict in the province by removing the flashpoints and obstacles that only serve to frustrate effective labour-management relations. We intend to introduce a number of measures to promote the smooth operation of the collective bargaining process.

Our fourth objective is to streamline and simplify certain procedures before the Ontario Labour Relations Board and before arbitrators, and this is a win-win situation for both sides. Today's commencement of public hearings into Bill 40 is only one of a number of opportunities for the people of Ontario to have their say on labour law reform.

Earlier this winter and spring, I conducted an extensive consultation tour in 11 communities across the province. More than 330 groups and individuals came forward to comment on our proposals. Two out of every three of these presentations were from the business community. In addition, more than 70 high-level private meetings were held between ministry officials, business representatives and community groups. As a direct result of this process, a

significant number of our original proposals, almost half, have been changed or withdrawn altogether. Ten significant changes responded directly to major concerns raised by the business community. These were proposals that gave employers serious concerns.

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Some people say that updating this law will affect job creation and investment in Ontario. I think we should take a closer look at this one. Government figures show that a total of 106 companies in the business sector have announced their plans to invest in Ontario since January 1991 alone. This represents a capital outlay of more than \$5 billion in equipment modernization and new business expansion in Ontario. These investments cut across all major sectors from primary industries, industrial equipment, food processing, automotive, environmental, to professional services and wholesale and retail trade. And who can predict the spinoff benefits these investments will generate in the years ahead?

It's no accident that today's successful economies like those of Japan and Germany are built on workplace partnerships that out-compete those nations still locked in an adversarial labour-management relationship.

Let me emphasize that this government is proud to support the dreams and aspirations of all workers whether they choose to organize or not. For those workers who do, Bill 40 will mean better working conditions and more involved, committed workplaces, from which we will all benefit.

In so many ways the potential of our workforce remains untapped. There are some great ideas for productivity out there that just need a vehicle to carry them to fruition. Labour law reform will help to change that.

As the minister, I have been disappointed but not surprised by the vehemence of the opposition to our proposals. Lately, however, I have sensed the debate shifting. I think a growing number of people have thought the issue through for themselves. They have gone beyond the headlines and the deafening pitch and are examining the bill for what it really is. Many of these people are concluding that the government's proposals are in fact quite reasonable and in most cases already in place in other jurisdictions.

Nevertheless, I remain concerned that the lingering opposition to this bill is so far out of proportion to its potential impact that the consequences of that opposition are now more of an issue than the actual bill itself. That's why I wanted to reinforce the fact today that Ontario's investment and employment potential remains high. Somehow investors know this, despite the rhetoric to the contrary.

It's my belief that the conditions are in place for a productive new relationship between management and labour in this province, one that I think it long overdue and something that's already under way at the most progressive companies. Bill 40 will simply allow for much more of this.

I want to thank you very much for the opportunity I've had here today, and for your time and attention.

The Chair: Thank you. The balance of the hour will now be shared by the critics for the Liberal Party and the Conservative Party.

Mr Steven Offer (Mississauga North): I don't believe I will require the full allocation of time. To commence, I think it is clear that this piece of legislation, Bill 40, does not create one single new job in this province. At a time when the unemployment rate is so very high, when hundreds of thousands of men and women are out of work, some for the very first time in their lives, this legislation, without job creation, continues.

I listened closely to the opening comments of the minister, and I think it is clear that the provisions of this legislation currently before the members of this committee, if passed in their current form, would result in this province of Ontario being a jurisdiction which, unlike any other jurisdiction in North America, contains all the provisions found within Bill 40.

To me, this bill is not about the right of a worker to organize, to join a union if he or she desires, and it's not about the right of a union to strike, if that is the process it follows. That is now addressed in the current legislation. Rules dealing with organization, rules and processes dealing with a myriad of areas, including stoppage, are now within the legislation. This is a bill which clearly tips the balance of the Ontario Labour Relations Act, a balance which has always been attempted to be maintained since this bill was first introduced. It tips the balance from one which is an attempt to balance interests between labour and management to one which is mandated to determine issues in favour of organized labour. I have concerns that when a balance like that has been tipped, in fact cooperation is not increased but indeed the opposite results.

Let us also be clear that when we speak to this bill, it does not address those issues confronting the approximately 70% of our workforce which is not unionized. This is not a bill for those men and women in this province.

I believe, Mr Chair, Minister, there isn't a member in this committee or indeed in the Legislature who hasn't had meetings in the past few years with constituents who have been let go from their jobs, hasn't met with them and been told what that means to them and their families. Over the past two years our economy has suffered; bankruptcies, closures, reduced operations have hit every community in this province.

I was somewhat dismayed by the minister's opening comment in terms of the opposition to this bill. I believe his comments spoke to his reaction as disappointed or saddened that individuals who were opposed to the bill had not gone behind the headlines in the local press. I take some exception to that because since I've been involved with this particular piece of legislation I've spoken to a great many people, both for and against the legislation, and those that spoke against the legislation were not just reacting to the latest press report.

They were individuals who had carefully gone through the legislation, carefully looked at what this legislation means to them, carefully looked at what the impact of this legislation may mean to them and to their workers and had concerns and followed that through with a disappointment

in the minister in not being responsive to those concerns which they had attempted to bring forward, and accordingly a suspicion of the so-called process of consultation arose. I hope in the time permitted, and I recognize the time restraints, we'll talk a bit about that.

I've heard from many that this bill does not create a positive climate for investment, that this bill does not send out an invitation that this province is a place where people can or should start a business or expand an existing business. We all know, in this room and outside, that to start a business creates new jobs; to expand a business not only creates new jobs but indeed secures existing jobs. This bill without question has created a negative climate. At a time when we are entering into a new era of competition, when our businesses are competing not just with businesses around the corner but indeed over the horizon, the government has moved forward with this legislation. Once more I would add that this legislation, if passed in its current form, as a whole would contain provisions which are found in no other jurisdiction in North America.

This is a time when labour and management should be working together; they are instead locked and focused over this bill. At a time when the concerted efforts of all are necessary to meet the competitive challenges of the day, many groups over the past year have been, and indeed for the next few months will be, keying in on this bill. I believe that this type of expense of energy is one which really cannot be afforded at this time.

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I recognize once more the time constraints and I want to deal very briefly with three major areas: first, the process. From the beginning, this process has not only been flawed but suspect. I won't go through all the difficulties over the process which have been shared with me, except to say that they come from many groups, organizations and associations that have truly not felt part of your process in the early part of this year. They looked at the bill, looked at the consultation paper, looked at the impact and wanted to share with you what that meant, and they felt excluded, shut out, locked out.

This is a very real concern. It's a concern shared by many people throughout the province. Of course we need only to remind ourselves that this Bill 40 was introduced June 4 of this year at approximately 3:30 in the afternoon and the same day, as members of this committee will recognize, within 90 minutes the government tabled new rules of procedure which had the impact of limiting debate; 90 minutes after the introduction of this bill there were new rules of procedure on debate in the Legislature. That didn't help the suspicion and the concern of many people around this bill. In fact it fuelled that fire of concern.

We know that as we deal with this bill, we operate under a notice of motion which limits this committee to but five weeks of hearings, three in Toronto. We know that as a result of a time allocation by the government, following these hearings there will just be eight days for clause-by-clause, following that there will be just a further two days for committee of the whole and following the two days is the only time allocated for third reading debate until this bill is passed into law.

That is an order and a motion which stands on the floor of the Legislature. It is restrictive in terms of the ability of this committee to meet with all those people who have expressed a concern with the legislation. I know the clerk and the Chair have been doing their very best to make certain that as many people as possible can be heard, but I believe there is no question that at the end of but three weeks in Toronto and a few weeks' travel, there will still be many, many people who will not have had the opportunity to bring forward their concerns, Mr Minister, in fact to go beyond, in your own words, "the headlines of the day," but rather to bring to this committee what this bill and these issues mean to the way in which they carry on business, create jobs and maintain existing jobs in this province.

I want to deal a little bit with the impact of the bill. It's an issue which will not come as any surprise to many people here. There has been a great deal of discussion over what this bill means in terms of its impact, an economic analysis if you will. The government has not conducted any economic analysis. They have not conducted any sector-by-sector analysis as to what this bill means in terms of the retail sector, the manufacturing or the agricultural sector. There have been such analyses performed or created by the private sector.

I think it's fair to say, Mr Minister, that whenever confronted with the results of those analyses, you have been highly critical. In many ways you have used some of the words you used today—"disappointing," "saddening"—and I think in some cases something even greater. There will be those who say it is your right to criticize analyses performed or conducted by the private sector, but I think others would say that as you have that right, you also have the obligation, if not the responsibility, to say, "I am critical of those economic analyses because we have done our own and this is what they show." That is where your criticism falls short, because you haven't conducted those analyses.

You have no idea what these changes will mean to our tourism sector. We have no idea what this will mean to the manufacturing base of this province and to the retail sector. I believe that the government of the day has the responsibility to conduct such an analysis before proceeding with legislation of this kind. Furthermore, I believe that criticism of others' analyses without having conducted one by yourself is a criticism which is quite empty.

We have to ask ourselves what this means in the area of replacement workers. I will bring forward an example. I know this is anecdotal but, for instance, in the area of public school bus drivers, what does this legislation mean if the replacement worker prohibition on school bus drivers continues? In many school jurisdictions in this province, the major way children get to school is on the school bus. With these provisions, if there is a strike with the school bus driver and replacement workers are not allowed, there is no way the children can get to school. What does that mean to the school system?

I use that as an example of what the impact will be, but I also use this as an example, Mr Minister and Mr Chair, that this is not an issue of labour on one side and management on the other. That is an incorrect characterization of

what this bill is. This is a bill which will impact many people, not just the business community. It is not just the business community which has indicated concerns with the legislation.

I note that later on this day we will have the opportunity to discuss with some of your officials some of the aspects of the bill. I look forward to that. We have concerns dealing with this legislation. We have concerns over the objects clause of the legislation. We know that by this legislation the Ontario Labour Relations Board must follow a certain direction or mandate. The labour relations board, Mr Chair, as I know you are aware, is the body which decides issues under the Labour Relations Act. If there is a dispute, the board is the referee. The objects clause, as dictated by these amendments, moves the labour relations board from what was an impartial adjudicator to one which must, and is directed to, favour organized labour. I have concern whether a mandate of this kind is one which will in fact increase cooperation or indeed, as I suspect, deter from cooperation. When the referee is decided to favour one side or the other, that does not enhance cooperation.

We do have concerns with the replacement worker provisions. We do have concerns—I'm very mindful of the time at this point—over the provisions of the legislation that talk to third party property where there is a right to picket on private property. We want to be exploring what the impact of that means. Again I will be coming back to that aspect.

Minister, I know you have used the mall setting as an example. I believe the wording of this legislation is much broader than the commercial, industrial, retail mall; it is much broader indeed. But even taking that as an example, one has to ask oneself what happens if there is picketing in one establishment in a mall and what that means to a neighbouring establishment which is not subject to the picketing. What does that mean to its business? What impact does that have on their service? The people who have come before me—again, Mr Minister, people who have looked very closely at this legislation—have deep concerns over what that means in terms of the protections afforded to them. They do not see any protection.

1400

We have concerns dealing with the whole issue of organization: the right of the workers to organize, the right of the workers to freely exercise their choice and to change their mind if they so desire. I believe the provisions of this bill severely take away from the rights of workers, not only to make a choice, but also to change their minds. A right, I add, is one which is shared by everyone in this country, not only to choose, but also to freely change one's mind if one so wishes. This bill takes away from that.

To conclude my opening comments, this bill is not about the right of a worker to organize, to join a union. This bill is not about the right of a union, if so desired, to strike. That is now within the legislation. This is a bill that has an impact that will affect many people in this province and that does nothing for the 70% of the workforce in this province that is not unionized. We want to discuss these issues and others as we proceed through this public hearing process.

In conclusion, Mr Minister, I hope you will certainly take strong consideration over your comments that those people who have been opposed to the bill have really not looked at the bill, that they sadden you or disappoint you, because they have looked at the bill. They have looked at it hard. They have wanted to share what this bill means to them. In fact, your action with them has been most saddening and disappointing.

Mrs Elizabeth Witmer (Waterloo North): As the Ontario Progressive Conservative critic for Labour, it's a pleasure today to respond to the statements made by the minister. I have to tell you, the more carefully I examine Bill 40 the more I become aware of the fact that it is very seriously flawed and I become aware of the fact that it's not going to create one single new job in this province. I'm even more concerned that it's going to infringe on the rights of both employees and employers and severely damage labour relations in the province of Ontario.

Therefore, we either need some very major amendments to this legislation or the government should go back to the drawing board and start again. I have to tell you, the more I look at the bill the more I am convinced the government should abandon Bill 40 and start again, and this time use the tripartite task force approach where we bring people together and, as a result of consensus building, come up with reforms that are acceptable to business, labour and the government.

We have to remember that Ontario has the most comprehensive labour legislation in North America; we cannot forget that. It also has a labour relations climate that is the envy of all jurisdictions in North America and a legislative record that reflects a real effort to balance the interests of the employee and the employer.

I believe it is critical that we continue to have fairness, equity and security in the workplace. I believe that a balance has to be maintained between the often opposing perspectives of labour and management and that any legislation introduced has to be weighed and assessed as to whether it's going to jeopardize the growth of the economy, on which ultimately the wellbeing and the job of the worker depend.

Unfortunately, if we take a look at Bill 40, this government has not weighed the legislation. It has not taken a look at the balance to determine the economic impact on the worker or the job. The government has never answered three very simple questions: (1) What will be the cost to the Ontario economy of these changes? (2) How much investment and therefore future job creation has been and will be lost because of Bill 40? (3) Why are these radical and sweeping changes necessary at this time?

The government has refused to deal with those three questions in a meaningful and measurable way. It has never conducted an economic impact study. Unfortunately other studies indicate that these changes are going to have a detrimental impact on future investment in this province and also on job loss. I ask again, why has the government not done an economic impact study and why does the government continue to put down all the other economic impact studies and not conduct one of its own to disprove what's being said?

At the present time, it is more important—Mr Mackenzie referred to this—that workers and management set aside their differences and work together to compete in the global economy. However, I want to tell you that the process used in coming to Bill 40 has simply polarized all things in this province. This government, because of the process, has created a crisis on the labour front where we didn't have one. Instead of working constructively with labour and management to earn jobs, to earn investment for the province, it has introduced reforms which unfortunately will not lead to peace, as the minister has said he wants; it's going to lead to greater turmoil and conflict in the workplace.

Also, I want to dispute the fact the government makes that every change in the labour reform package is already in place in some other jurisdiction. This is simply not so. These proposals have been cherry-picked from different jurisdictions. Some of them have been enacted in other provinces; however, they are not in place anywhere in a total package, and I can tell you that some of them are not in place in any province whatsoever. We simply have to take a look at the purpose clause; you won't find it in any other Canadian province. Take a look at third-party picketing; it's not in place in any other province. Take a look at first-contract arbitration. For this government to say that all these changes are in place elsewhere is simply not true, and the list could go on.

Also, the government says it wants harmony and prosperity. Well, I can tell you that even though Quebec introduced the replacement worker law, there has not been harmony and peace in Quebec. They've had more days lost to strikes than Ontario despite a much smaller population base. The one thing we need to remember too in regard to the Quebec labour laws in the case of the replacement worker section is that Quebec laws let supervisory workers from other plants replace strikers. Also, Quebec laws require a vote from the workers before a strike can be called, unlike Ontario where work can be stopped if a union leader says so.

Again, Mr Mackenzie mentioned today that we need to update the act to reflect changes in the workplace. Well, I can tell you that the act has been amended in the past 15 years. Many changes have taken place. I don't want to indicate all of them here, but just a few of them are: in 1983, professional strikebreakers were banned; in 1986, first-contract arbitration was introduced and the act was amended to bring it into line with the charter. As well, laws affecting labour relations such as employment standards legislation, occupational health and safety legislation, workers' compensation, pay equity, wage protection fund and parental leave have all been dramatically altered during the past 15 years.

Yes, there have been changes made, and the act has been updated and the labour climate has changed within the last 15 years. Although the government claims there is a need to overhaul the act, there's certainly no demonstration that it needs to take place at the present time. Again, as I want to remind you, we already have the most progressive labour relations in North America.

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The minister said today that we need to get rid of the adversarial system in this province. I want to tell you that this bill, in the manner in which it has been introduced, has heightened the polarization in this province. It has increased the adversarial atmosphere. It's because of that process that we now have a very uncertain economic climate in this province, one that has contributed to the loss of investment and jobs.

At the present time, because of the process the minister has used, we now have Ontario being considered by people throughout the world as an area that is increasingly hostile to private enterprise. People throughout the world, whether it's the German investor, the Japanese investor or the American investor, are telling us they have no interest in investing in Canada. You know, if we have no new investment in Ontario, we have no new jobs at a time when people in this province are absolutely desperate for a job.

It's the process the government used that has contributed to the lost investment and jobs. Instead of consensus building in this highly sensitive area of labour relations, instead of establishing a tripartite task force composed of equal numbers of business, labour and government, bringing them together, asking them to review the labour relations system, asking them to identify the problems with the system and to make recommendations for changes, this whole agenda, from beginning to end, has been shaped by proposals that were drafted by the Labour minister on behalf of trade unions. The entire process since March 1991 has used one agenda, and all participants have been forced to respond to the union leaders' agenda—all the participants in the so-called consultation process.

The cooperative approach to establishing an agenda to determine what needed to change within labour relations, all of this was sacrificed. There was no attempt ever for a cooperative approach. That's unfortunate, because that is what has contributed to the adversarial climate in the province and the uncertain economic climate.

The minister referred to the fact that people have expressed concern about the bill. Why are people concerned? I've just told you: the process that was used, and also the fact that we have here the most radical pro-union set of reforms ever proposed in a single package in any jurisdiction in Canada. Moreover, these proposals tilt the balance of power in favour of unions.

I can understand the government's desire to see some changes made to our labour laws but you know, in something as sensitive as labour relations, it's important that you cooperate, consult and build consensus and not create the adversarial atmosphere and the polarization that this government has created in this province today.

One of the areas that concerns me the most is what Bill 40 does for the individual worker. It's a concern I've had from the outset. There's a real infringement on the rights of the individual and the worker. The minister talked about the need to allow the part-time worker, the immigrant worker, women, to unionize. Yes, I do believe that all individuals should have the right to organize if that is their wish. However, the process must ensure that all those workers are fully informed of what is involved in joining a

union, and the process must ensure that each individual can express his opinion freely without intimidation from any source, whether it be the union organizer or his or her employer.

I want to remind you that immigrants are in a very vulnerable position. Their communications skills are poor. I say this because I'm the daughter of immigrants and I know how my parents struggled in that area. These people need to be given the right to organize if that's their wish. However, they should be fully informed of what is involved in joining a union and this legislation does not allow for the complete distribution of information. The bill must make it mandatory that the union provide all relevant information to the workers concerning its constitution, its dues, the significance of strikes, its labour history etc, and the management side needs to be able to present its argument for or against organization, or you're simply going to put these people in a position where they don't understand the step they've taken in joining or not joining a union.

Then you need to make sure not only that the worker is well informed; you need to make sure he or she has an opportunity to express his or her desire by means of a secret ballot. This is the only true way of enabling one to freely express his or her opinion, because we know that all individuals at times are subjected to coercion on this issue from both sides. That's why that secret ballot is so essential. So if we're really concerned about those immigrants and those women, people who are very vulnerable to intimidation, let's make sure we provide them with all the information and give them the secret ballot.

There are many other areas within Bill 40 that I'm concerned about. I'm concerned about the replacement worker section. I'm concerned that it's certainly going to impact on the jobs in this province. Many people have indicated to me already that this is one of the reasons they would leave the province or would build a plant elsewhere. It's going to have a very negative impact. It did in Quebec and it led them to choose other alternatives.

I could go through the bill and talk about other sections as well that I'm concerned about. I'm concerned about the change in direction in the purpose clause and certainly I'm concerned about the first-contract arbitration, where there would be access to first-contract arbitration for either the union or employer after 30 days after the legal strike-lockout date. Again, no other Canadian jurisdiction has this provision and I think we have to take a look at the consequences. Unfortunately, one of the consequences is going to be that it's not going to work towards the goal Mr Mackenzie talked about, the goal of greater labour and management cooperation, because it's going to take cooperation out of the hands of the union and the employer and it's going to put it in the hands of a third party. I'm certainly very concerned about that.

I'm concerned about the third-party property provision because it actually overrides the Trespass to Property Act and it will violate the rights of property owners and innocent consumers. I'm concerned about the opportunity to combine newly certified or existing bargaining units for the purpose of conducting collective bargaining. Again, the consolidation of bargaining units is going to mean that local autonomy is going to be lost and that individual

employees are going to lose control over their destinies, all for the sake of enhancing union power. I'm concerned about the full-time and part-time unit proposal. Again, no other Canadian jurisdiction has this provision, and again, individuals are going to sacrifice their choice and their freedom.

This legislation is not going to do anything to create new jobs or to encourage investment in Ontario, and I think on that basis alone it must be considered. It's going to hurt the individual freedoms of individuals. However, if this legislation causes even one company to leave Ontario or discourages one company from locating in Ontario, then it has hurt the people in this province. This government needs to remember that it has a responsibility to act at all times in the best interests of all the people in Ontario. They cannot simply respond to the union leaders' agenda.

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It's unfortunate that up until now all the partners in the process have not been consulted. I want to tell you, Mr Minister, that I've recently started to receive faxes from unions—obviously smaller unions, not the big ones—telling me they're upset that they were not involved in the process of Bill 40 and in determining the direction to go in. They're concerned that the big unions had the input.

It is unfortunate that the government hasn't listened to input from all the people in the province. It's unfortunate that there's not a real commitment to ensuring that there's balance in the legislation, and that recognition of the fundamental rights and freedoms are not in the legislation.

I would urge this government either to amend this bill drastically or to send it back to the drawing board. I urge this government to start listening to all the individuals in this province; not only listening but incorporating the agenda of those people who are making presentations.

The one concern I've had and that I want to mention again, before I stop today, is that we're sitting here for five weeks—we're travelling the province for two of the five—and that what we're doing is a public relations exercise that's not going to achieve any real change in Bill 40. I would suggest that the government listen seriously to the concerns of people in this province about the impact of Bill 40 on jobs in this province.

We need to develop a cooperative atmosphere—I agree with the minister—and we need to serve all the people. We need to ensure the economic viability of this province. In order to do that, we need to make sure that all voices are not only listened to, but that their views are incorporated into the rewritten draft of Bill 40.

The Chair: Thank you. I appreciate your taking the time to be here. We will spend the balance of the afternoon with the deputy minister and three of his staff. If those people could come and seat themselves at these four mikes, there are copies of Bill 40 available, to people who want them, on the front tables.

Please tell us who you are and your titles: Deputy Minister Jim Thomas first.

Mr Jim Thomas: Good afternoon. I'm pleased to be here this afternoon to take you through a technical review

of Bill 40. With me are Pauline Ryan, Jerry Kovacs and Tony Dean.

The Chair: Ms Ryan, I understand, is the policy adviser, Ontario Labour Relations Act.

Mr Thomas: That's correct.

The Chair: Mr Kovacs is of the legal services branch.

Mr Thomas: Yes.

The Chair: And Mr Dean is the administrator, office of collective bargaining information.

I understand you're going to give an introduction to the bill and then discuss some specific clauses. Then of course people will be available for questions from members of the committee.

Mr Thomas: Yes. What I thought I would do, if it's agreeable to the committee, is to begin with a basic labour relations overview, then get into the overview of the reforms and then on to the important aspects of the reform and perhaps take you through a reading of Bill 40 and how it plays out.

Before delving into the specifics of Bill 40's reforms, I thought it might be helpful to provide a quick overview of the Labour Relations Act; that is, to whom it applies, how employers, employees, unions operate under it, how it is enforced, and definitions of some of the basic terminology of the act that you're going to be hearing over the next five weeks.

I'd also like to briefly contrast the Ontario Labour Relations Act, which will be referred to of course as we go through as the OLRA, with the Employment Standards Act, the ESA, since Bill 40 does contain amendments to both acts.

The Chair: If I might interrupt, and I'm sorry to do that, people who are watching should know that if they want a copy of the bill they can write to their MPP or to the clerk of the committee, to get a copy of Bill 40, or of course to inquire about or acquire any of the other material you're referring to. So people should note that. It's a simple matter of calling or writing their MPP or anybody else at Queen's Park and they'll get that promptly. Sorry to interrupt. Yes, Mr Offer.

Mr Offer: On a point of order, Mr Chair: I'm wondering if we might be able to get, as best as possible, some idea as to the time required for this very important overview and then the time which would be allocated to the caucuses.

The Chair: We're here till 5 o'clock. How long do you estimate you'll be taking in your introduction and presentation?

Mr Thomas: Without questions, it's about an hour and a half.

Mrs Witmer: In total?

Mr Thomas: In total.

The Chair: Perhaps you could try to accelerate that a little bit.

Mr Thomas: I'll do my best.

The Chair: We'll be watching the clock.

Mr Thomas: The most basic distinction between the two acts is that the Labour Relations Act governs unionized workplaces while the Employment Standards Act governs all employees in the province regardless of unionization.

The role of the OLRA has been to govern the process by which employees in most of Ontario's workplaces may organize and negotiate collectively with their employers. It does not apply to non-unionized workplaces and it does not require that any workplace become unionized. Rather, it sets out the circumstances in which a majority of employees in a workplace may form or join a union to represent them in collective bargaining with their employer.

The OLRA applies only to those persons whom it defines as employees. Managers, professionals, domestics, agricultural workers and a list of others are currently specifically excluded from the application of the act.

Whether or not a workplace is organized, the Employment Standards Act applies to ensure minimum standards of employment terms and conditions. While the most familiar of these terms is the minimum wage, it also sets out rules governing maximum work hours per week, public holidays and a range of other subjects. While the ESA provides minimum standards for unionized employees and non-unionized, the OLRA provides a framework in which employees may join together to take a role in the operation of the workplace and to negotiate for improved terms and conditions of employment.

When employees choose union representation, the union becomes the exclusive bargaining agent of the employees and the employer is required to deal only with the union in bargaining terms and conditions of employment. Unionization occurs either with the consent of the employer, and that is called voluntary recognition, or on application by the union to the OLRB, the Ontario Labour Relations Board, for certification as the exclusive bargaining agent of a particular employer's employees.

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The process of unionization typically begins with a union organizing campaign. Union representatives meet with employees to discuss whether the employees wish to join the union. By doing so, that union would represent those employees collectively in bargaining with their employer about their terms and conditions of employment. The union representatives must gather evidence of support for the union in the form of signed membership cards or applications for membership. The act also requires that the union representative receive a minimum \$1 fee from each employee supporter in respect of membership fees or an application fee.

Once a union has gathered signed cards from a majority of an employer's employees, it will file those cards along with an application for certification before the Ontario Labour Relations Board.

In issuing a certificate, the labour board is charged with determining the appropriate bargaining unit which the union will be certified to represent. The "appropriate bargaining unit" is a description of the class or classes of employees that the board decides are most appropriately grouped together for collective bargaining purposes.

After determining the appropriate bargaining unit in an application for certification, the board then identifies how many employees of the employer fall within that unit. The board counts the number of employees who are union members or who have applied to become union members. With 55% support, the union is certified. This result is usually referred to as automatic certification or certification without a vote. In cases of unequivocal and unchallenged majority support for the union, certification may take place without a hearing. If the union has less than 55% support but more than 45% support, the board conducts a vote to determine support for the union.

Currently the board sets a deadline known as the "terminal date" for the filing of evidence of support for or opposition to the union. The act now permits the board discretion to determine that terminal date. The board's practice is to set a date about 10 days after the filing of the application for certification. It's within that 10-day period between the date of the application for certification and the terminal date that petitions of opposition to the union are often filed. If the names on a petition overlap with the names the union has submitted as union supporters such that the union cannot show unequivocal support of 55% of the bargaining unit, the board will hold a hearing to determine whether the petition was voluntarily signed. If it's found to be voluntary, the board will order a representation vote.

After voluntary recognition or certification of a union, collective bargaining in good faith must occur. If the parties are unable to reach an agreement, either may request that the minister appoint a conciliation officer to assist them. If the officer is unable to assist, she or he typically advises the minister that it is unadvisable to appoint a board of conciliation before which the parties should appear. This results in issuance of what is commonly referred to as a "no-board report," which is a letter from the minister advising the parties of the conciliator's advice. It is the legal prerequisite to a strike or lockout. The parties are in a lawful strike or lockout position 14 days after the release of the no-board report.

The act provides an alternative to strike or lockout in the instance of bargaining the parties' very first collective agreement. Either party may apply to the OLRB for a direction that a first agreement be settled by arbitration. There must be wrongdoing on the part of the respondent party before the board will issue the direction to permit access to the arbitration process. Arbitration of the terms and conditions of a collective agreement is commonly referred to as "interest arbitration."

The act sets out a number of mandatory provisions that all parties must include in their collective agreements such as a method for resolving grievances by private arbitration. The act governs the jurisdiction and procedural powers and the duties of these private arbitrators. As opposed to interest arbitration, arbitration of disputes under a collective agreement or grievances regarding violation of a collective agreement is commonly referred to as "rights arbitration."

The Chair: Excuse me, if I may. Some committee members have expressed an interest in having a copy, if you do have a text you're presenting this from, to follow along with you. If you have copies, could we have them,

and, if not, perhaps they could be made over the next few minutes. The clerk could make them.

Mr Thomas: We can make them over the last few minutes if we don't have them.

The act also provides an expedited system of arbitration by a sole arbitrator for use in resolving grievances regarding breach of a collective agreement. In that case the minister appoints the sole arbitrator.

The act contains provisions governing employees' rights to seek termination of the bargaining rights of the union that represents them. It governs how and when other unions may seek to displace a union currently holding bargaining rights.

The act governs the transfer of a union's bargaining rights in the event of a sale of the employer's business to another employer company. Further, the purchaser becomes a successor employer and is bound to certain proceedings involving the vendor employer. These provisions also deal with problems that arise when the purchaser intermingles its own union or non-union employees with employees who were already working for the vendor employer. Together these provisions are commonly referred to as a union's "successor rights" under the act, and I raise that with you because there are provisions within the Ontario Labour Relations Act reform that deal with successor rights changes.

The act guarantees basic organizing and collective bargaining rights to employees, prohibits a number of practices or activities by unions and employers and sets out a number of duties for each. For instance, the act prohibits an employer from penalizing employees for reason of their exercise of statutory rights. It also imposes a duty upon unions to fairly represent individual employees. These provisions of the act are generally termed "unfair labour practices." They are enforced by way of a complaint to the Ontario Labour Relations Board under section 91 of the act, and the board's remedial powers include reinstatement of employees who were dismissed for reasons contrary to the act, and the authority to require that a union take certain actions on behalf of unfairly treated members.

The act empowers the labour board as the tribunal charged with administering and enforcing the act. For example, it deals with applications for certification or termination of union bargaining rights and with complaints of unfair labour practices. Arbitrators represent a different sort of tribunal. They are established under private collective agreements for the purpose of resolving disputes under those agreements. The OLRB is a public tribunal and arbitration boards are private tribunals.

Finally, the act contains extensive provisions regarding the establishment of bargaining rights and special procedures for collective bargaining in the unique circumstances of the construction industry.

Unless committee members have particular general questions regarding the operation of the act, I propose next to provide a general overview of the areas of reform contained in Bill 40.

The Chair: Thank you. Please do.

Mr Thomas: The bill's reforms are focused in the following areas. There are 11 areas of reform, and as you will be getting a copy of these remarks, you won't of course need to write them down, but I'll just briefly take you through them: (1) the creation of a purpose clause; (2) enhancing the ability to organize; (3) streamlining the organizing process; (4) expediting the certification process; (5) redesigning the structure and configuration of bargaining units; (6) protecting the negotiation of the first collective agreement; (7) improving collective bargaining—reducing conflict related to industrial disputes; (8) preserving bargaining rights; (9) approving the adjudication by the Ontario Labour Relations Board; (10) exploiting and streamlining the grievance arbitration process; (11) structuring adjustment and change in the workplace.

After having reviewed the highlights of reform in these areas, I propose then to turn to the language of Bill 40 itself, and I'll make my best efforts to explain the sections of the bill and the manner in which those sections create the changes that I'm going to talk to you about.

The first one is the creation of a purpose clause. The proposed new purpose clause would expand upon the theme of the current preamble. The preamble focuses on the act's purpose of encouraging fair practices in collective bargaining. The purpose clause would give greater guidance to the OLRB in cases where the board finds ambiguity in the intent of particular provisions of the act.

Like the preamble, it focuses on the collective bargaining process rather than on results. However, it is more specific than the preamble and it explicitly recognizes the purpose of encouraging cooperative approaches between employers and unions in workplace adjustment and in promoting workplace productivity.

In other jurisdictions, such as British Columbia, Alberta, Manitoba and the federal jurisdiction, where labour relations statutes contain purpose clauses, the labour tribunals charged with interpreting the statute have relied on the purpose clause when their decision-making must take account of statutory intent that is not clear on the face of the particular provision governing the case. It is intended to resolve ambiguities.

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The second area of reform is enhancing the ability to organize. The effect of this category of reforms is to modernize our labour legislation consistent with many other jurisdictions in Canada. Professional employees and domestics, formerly excluded from the right to organize under the act, are now permitted to organize, just as in most other jurisdictions. There is an exception in the case of certain physicians and interns and residents who are covered by existing collective bargaining regimes. They will not have access to collective bargaining under the OLRA.

As is the case in every other jurisdiction in the country, security guards in Ontario will no longer be limited in their choice of trade union representation. Guards will be permitted to join the trade union of their choice, but the OLRB would be required to place guards in a separate unit if they monitor other employees to such an extent that there would be a conflict of interest if they were included in the same unit.

The bill contains provisions that by way of regulation would permit inclusion of agricultural and horticultural workers. These workers are currently excluded from access to collective bargaining. The provisions envisage the possibility of a separate regime that would not involve the right to strike or to lock out.

As you may be aware, Bill 40 was tabled before the minister's agricultural task force actually submitted its initial report to the government, so these provisions of the bill were drafted before the task force made its recommendations. The government has noted that it awaits further recommendations from the agricultural task force and it has made a commitment to consideration of the task force's current recommendation to a separate statutory treatment of agricultural workers' rights to collective bargaining.

The third area is streamlining the organizing process. Currently there is very little in the act which addresses the difficulties that can occur between an employer, a bargaining agent and employees during the course of an organizing drive. The bill will provide for an expedited hearing process for complaints of unfair labour practices resulting in the dismissal or discipline or improper penalizing of an employee during an organizing campaign. While only a minority of employers engage in such behaviour, such allegations can be very intimidating to other employees and can have a chilling effect on an organizing campaign. These cases need to be investigated and resolved quickly.

Under the bill's provisions, the board will be required to commence hearing of any such complaint within 15 days of its receipt and will sit on four consecutive days each week until the hearing is completed. A decision must be issued within 48 hours of the completion of the hearing. In this way, very emotional confrontations can be expeditiously resolved at a very sensitive time in the unionizing process.

The bill provides employees and union representatives with the right to organize and picket on third-party property, but limits it to entrances and exits of that workplace. The typical example of affected third-party property is the shopping mall. This right will allow unions an opportunity to meet employees in the proposed unit who are otherwise difficult to identify and reach.

Affected parties may apply to the labour board for further restrictions on the number of organizers or pickets, the time of picketing, the location etc. In the event that such activity unduly interferes with business activity of a third party—for example, if a clothing store within a mall was struck today, the picketing would likely occur at the entrance to the mall, affecting all mall patrons. The new provision allows picketing at the entrances and exits to the clothing store itself. If other businesses in the mall feel their business is unduly disrupted, they may apply to the board for further restrictions.

The fourth area of reform deals with expediting the certification process. The bill maintains the current requirement of evidence that 55% of employees in a bargaining unit are union members before the board will grant automatic certification, but the bill lowers the minimum percentage required for a representation vote conducted by the board from 45% to 40%. Therefore, when the OLRB receives undisputed membership evidence through signed

cards that at least 55% of employees in the proposed unit wish to join the union, a vote to confirm these wishes is not required, and where a union shows that it has support of between 40% and 55%, a vote will be conducted. The existing requirement of the \$1 fee payment as part of proof of union membership is eliminated.

The act's provisions dealing with the board's processes in determining employee support for the application for certification are modified to ensure that the process is fair and not subject to unnecessary contention. In many cases, current board practice is codified and I will point those out to you in the clause-by-clause description.

The bill would prohibit consideration of petitions filed after the date of the filing of the certification application; that 10-day period from the certification application date to the terminal date is eliminated. As I indicated earlier, the board currently will accept petitions filed at any time up to the terminal date. The bill will make the terminal date the same as the application date. This means that once the union has filed its application for status as the bargaining agent, employees cannot seek to revoke their previous support, other than by disputing the voluntariness of their original choice; that is still possible.

Note that nothing in the bill prohibits consideration of petitions submitted on or before the application date. Further, evidence of intimidation, coercion or unfair labour practices relating to the gathering of membership evidence may be presented to the board after the application date. The amendments related to petitions bring Ontario in line with many other jurisdictions in the country.

Ontario experience has shown that petitions are filed in about 20% of all certification cases and that most of these petitions, somewhere between 80% and 90%, are rejected by the board after extended litigation.

The bill amends the act's provisions regarding certification of a trade union by the board in the event of an unfair labour practice by the employer. Currently, the board must satisfy itself that employer conduct has been so intrusive and intimidating that it makes it unlikely that the true wishes of employees about their desire to join a union can be ascertained. That's one part of the test.

The second part of the current test is that if the union wants automatic certification without a vote because of the employer interference, the union must show evidence of adequate membership support. It may be impossible for a union to demonstrate adequate membership support if an employer engages in effective, unfair labour practices early in the organizing campaign. Therefore, the bill removes the second requirement.

British Columbia's legislation takes a similar approach.

The fifth area of reform is redesigning the structure and configuration of bargaining units. Unlike all other jurisdictions, the Ontario Labour Relations Board has determined that part-time and full-time employees do not usually share a community of interest and the board therefore generally holds that it is inappropriate to combine full-time and part-time employees in a single unit.

Bill 40's reforms in this area of the law follow the evolving nature of the Ontario workforce. The number of part-time workers almost doubled between 1975 and 1991,

from 430,000 to 806,000. Part-time workers now form 17% of the province's workforce. In 1990, women made up about two thirds of employees who took up part-time work on an involuntary basis—because they had to, not because they wanted to. Ninety per cent of part-time work is found in the province's fastest-growing sector, the service industry.

The bill proposes that the act would deem that a bargaining unit consisting of both full-time and part-time employees is appropriate for collective bargaining. This would ensure that collective bargaining better reflects the modern reality of our workforce. In applying for certification, a union would be required to apply for a combined full-time and part-time unit. If the union lacks majority support across that combined unit, the board would be required to separate the employees into full-time and part-time units. A separate count of union support would then be taken in each of the units and the union would be certified if it had majority support in either unit.

The bill also proposes the addition of an important new provision in the act governing the consolidation of bargaining units. Consolidation is the merger of two or more separate bargaining units into a single bargaining unit. As in the case of part-time employee bargaining units, legislative direction is required to ensure that the Ontario Labour Relations Board is authorized to take such actions.

A number of labour boards in other jurisdictions already exercise the power to consolidate existing or proposed bargaining units. The experience in these jurisdictions has been that requests for consolidation are received from both employers and trade unions. The benefits of consolidation extend to both the employer and the employees. Employers can avoid the risk of numerous strikes and numerous rounds of negotiations, while employees benefit from the strength of speaking with one greater voice.

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On application by either an employer or a union, the board would have the discretion to combine two or more units, provided that the units were represented by the same union and involved the same employer. The proposed section sets out a number of factors that the board is required to consider in determining whether consolidation is appropriate, including the extent to which consolidation would facilitate viable and stable collective bargaining or would cause serious labour relations problems.

In cases involving geographically separate locations of an employer, the board would be prohibited from combining bargaining units where to do so would interfere with the employer's ability to maintain significant operational or production differences between the locations. For example, an industrial manufacturer with large plants in different locations in the province may operate the plants in very different manners and for very different production purposes.

The sixth area of reform is protecting the negotiation of a first collective agreement. Currently, after a union is certified or voluntarily recognized as the bargaining agent of an employer's employees, the union and the employer are required to negotiate a collective agreement. As I indicated, they go down the process of attempting to reach an agreement, and ultimately if a no-board report is generated,

that becomes the necessary prerequisite to a strike or lockout; 14 days thereafter is the legal time frame.

In the negotiations between an employer and a newly certified or voluntarily recognized union, the union is often in its weakest position and bargaining is often at its most difficult. Furthermore, one or both of the parties may be unfamiliar with the collective bargaining process. In addition, it is the first time the parties are addressing a variety of terms and conditions of employment.

A strike or lockout is often particularly inappropriate for dispute resolution at this opening phase of the parties' relationship. Because of this problem, it may be more appropriate for resolution of bargaining disputes to take place by way of arbitration—this would be interest arbitration—rather than strike or lockout. The OLRB already addresses this in section 41's procedures for application for first-contract arbitration.

Where a party contravenes statutory obligations or there are serious difficulties in the parties' relationship, the act presently permits arbitration of the parties' first collective agreement. However, this route is available only after application to the labour board for a direction that the agreement must be settled by arbitration. The applicant must meet one or more of the act's tests for serious difficulty in the parties' relationship.

After the board makes the direction, the parties presently may choose either the OLRB or a private arbitration board to arbitrate the terms of their collective agreement. Practice under the first-contract arbitration provisions has proven to be costly, both in terms of the expense and time required to litigate before the board. On average, it takes 48 days to complete the direction process. It can take several months, and has taken as long as 613 days, to complete the process of defining a direction to proceed to arbitration, and then there is the arbitration time added on to that.

Bill 40 proposes a right of automatic access to first-contract arbitration after 30 days have passed from the point at which the parties have been in a legal strike or lockout position; that's the 14 days after the no-board report. This is similar to the system under Manitoba's statute. Application would be made to the minister, and both the applicant and the respondent would be required to file a complete version of a collective agreement which they would be prepared to sign. This is an attempt to ensure that the parties will make some serious effort at making a collective agreement while not creating barriers to arbitration.

The bill proposes to maintain the current system for first-contract arbitration. Therefore a party will have a choice. A party can choose to go the OLRB route for a direction that a first contract be settled by arbitration, but the OLRB would no longer be the arbitrator; it would go to private arbitration. As a result, under both the old and the new systems, parties would now use private arbitration boards to settle the terms of their first contract. The parties may agree to use final-offer selection—like the baseball draft—as a method of arbitration.

Another area of reform focuses on just-cause protection for newly organized employees who have not yet reached a first collective agreement with their employer. Currently, during the term of almost every collective

agreement employees cannot be arbitrarily disciplined or dismissed. This is because most collective agreements contain a provision that the employer shall not discipline or dismiss an employee without just cause.

Just-cause protection is one of the fundamental outcomes that unions and employees seek in the collective bargaining process. As a result, unionized employees have a right that non-unionized employees lack, the right to challenge discipline or dismissal and to have such employer action reversed if it was not taken with just cause.

Non-union employees only have a common-law right to sue their employer for lack of sufficient notice of dismissal; the courts do not consider the propriety of dismissals and do not reinstate employees to their jobs, nor will the courts hear complaints of improper discipline. Just-cause protection then becomes one of the fundamental outcomes of unionization.

The bill seeks to address the delay the legal system causes to newly unionized members and the goal of achieving just-cause protection against wrongful discipline or dismissal. Employers would be prohibited from discharging or disciplining an employee without just cause in the period following the certification of a trade union up to the point where the first collective agreement is made. So from the date of certification up to the point where the first collective agreement is made, the bill would add just-cause protection.

In addition, in a second area, the bill provides that all collective agreements shall be deemed to include just-cause protection during the operating of the collective agreement. In both instances, the bill provides that a lesser standard may apply for probationary employees.

Finally, the bill also proposes continuation of just-cause provisions in the period following the expiry of the collective agreement, up to the point of making the renewal collective agreement—the open period during a collective agreement.

In adopting these measures, Ontario's legislation would follow the lead of the Manitoba and British Columbia statutes.

The seventh area of reform is improving collective bargaining by reducing conflict in industrial disputes. Bill 40's provisions regarding the use of replacement workers during a strike represent a new and unique approach tailored to meet the particular concerns of Ontario's labour relations scheme. The Bill 40 approach is different from the Quebec model and different from the models suggested in the government's discussion paper of November 1991. The government has attempted to design these provisions in a manner responsive to the many comments received during the consultation process.

In addition to those many comments, the government gave special consideration to Ontario's experience with strikes and lockouts. The government has also very carefully considered and attempted to address employers' and the public's concerns regarding the continuation of services in special workplaces and in special circumstances.

Ministry of Labour statistics for 1991 for collective bargaining that is under the Ontario Labour Relations Act indicated, first of all, that there were 94 work stoppages in

1991. I'm at page 21, if you're now following along. Of the 94 stoppages, 56 involved the use of replacement workers. Of the 56 stoppages where replacement workers were used, in 19 of those cases the employer used replacement workers who would be prohibited by the new provisions of Bill 40. Of those 19 cases, only five were in the manufacturing sector and no auto parts disputes would have been affected.

The replacement worker provisions are intended to minimize picket line violence and to ensure that collective bargaining disputes are resolved as quickly as possible. The prohibited categories of persons are those whose employment during a strike or lockout is most likely to engender hostility between the parties.

The replacement worker provisions work by creating statutory prohibitions against the use of certain categories of employees. Where the provisions do not particularize the location where the employees may or may not work, it means that those categories of employees are prohibited from working at any location, whether it be the struck location or elsewhere. One of the categories does focus on location and it lists the sorts of persons who are prohibited from working at the struck location.

It's important to note that an employer is prohibited from using the listed persons only if the union can prove support for the strike from at least 60% of bargaining unit members who vote in a secret ballot strike vote. Failing that, there are no new limits on the employer's ability to use replacement workers.

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The provisions also set out the type of work that the listed persons cannot perform. Bargaining unit employees—these are members of the striking bargaining unit—fall under a blanket prohibition and they cannot be employed for any purpose. The other categories of banned persons are specifically prohibited from doing either the struck work or the ordinary work of someone who has been shifted into the struck work to backfill.

As you see, the provisions describe which persons are prohibited from working, rather than those persons who are permitted to work, during a strike or lockout. The list of permitted persons is drawn by inference. I'll describe that list in terms of those who may work at the struck location and those who may work at other locations. I think it's important that all people are proceeding forward with the same understanding of who can work and who can't work so I'll cover it here, but I'll also show you later on how it fits into section 73.1 of the bill.

At the struck location, the people who can work are managers from that location, non-bargaining unit employees from that location who have a right to refuse to work and other people who were usual workers at the struck location prior to the strike, for example, volunteers or independent contractors.

At other locations, the people who can do the work include managers and supervisors from any location, non-bargaining unit employees from any location who have a right to refuse and other persons who were the usual workers at any location prior to the strike: the volunteers, the

independent contractors. On top of that, an employer is not prohibited from contracting out the struck work.

Let me go back the other way and tell you what are the prohibited categories of people. First of all, members of the striking bargaining unit cannot perform any work at any location during the strike. Second, new hires, people who have been hired since the notice to bargain was given, cannot perform either the struck work or the work of the person who has been shifted into struck work at any location; that's the backfill one.

At the struck location, the employer cannot use any of the following people to perform either struck work or the backfill work: (1) any manager, employee, volunteer or independent contractor who usually works at a different location; (2) any manager, employee, volunteer or independent contractor who was transferred to the struck location after bargaining had commenced; (3) any person other than a manager; and (4) any person supplied by another person, like the temporary services.

If I can take a minute more on this so that people are clear, if a person has two operations, one in Toronto that is on strike and one in Barrie that is not on strike, the employer can transfer the work if it wishes, if it can, to the Barrie operation. When it's doing the work in the Barrie operation, it is able to use those people on page 23, in the second numbered paragraph: managers from any location, non-bargaining unit employees from any location who can refuse etc. Those are the people who can be used in the Barrie location.

If the employer continues to operate in Toronto at the struck facility, there are more restrictions on who that employer can use, because that's the entity that's on strike. So at the struck location, the employer basically can use managers or supervisors from that location and non-bargaining unit employees from that location who have a right to refuse. They can't use new hires or striking bargaining unit members and they can't transfer people in after the strike has begun and say those are people who are now part of the struck location workforce.

I'll go over this one more time and certainly take questions from you to make sure people are clear on this when I get to the clause reading, which I'll get to very quickly.

As I suggested earlier, the bill contains an extensive set of provisions regarding exceptions to the replacement worker ban. I've told you who an employer can use and who it can't use in the normal case, but there are two categories of exceptions. One focuses on special circumstances in which an employer may use people who are otherwise prohibited replacement workers. The other category focuses on special workplaces where employers may use people who are otherwise prohibited, in order to provide key human services.

The first category, the special circumstances category, applies to all employers generally, no matter what the employer's business. An employer is not bound by the replacement worker prohibitions in circumstances where its business must continue in order to prevent danger to life, health or safety or serious damage to equipment or premises or serious environmental damage.

The second category ensures the provision of a list of certain key human services such as correctional institutions, halfway houses, group homes for the mentally disabled and crisis intervention centres. A strike, then, will not prevent the continuing provision of these services.

In order to continue business in either of these special circumstances, the bill proposes to permit employers to use what the bill calls "specified replacement workers." These are categories of people that the replacement worker provisions would otherwise ban from working, but they can be used either to prevent the harm or to provide human services.

An employer must notify the union of the extent to which it wishes to use replacement workers, in the event that its services fall within the key human services or if it's into the endangerment exception. The union has a right first to agree to use bargaining unit employees. The parties have access to the Ontario Labour Relations Board to resolve differences related to these provisions. In an emergency, an employer must notify the union as soon as possible of the need for use of replacement workers. In the interim, it may proceed to use replacement workers. The union would have a right to replace those workers with bargaining unit employees, provided the employees are willing to work.

To assist the board—these become matters that need to be dealt with quickly, particularly in the emergency kinds of situations—the board is empowered to assign a single vice-chair to hear these cases. Further, the board is authorized to make special rules to expedite proceedings.

Another important area of reform related to dispute resolution is the return-to-work protocol. Under the current provisions of the act, employees have a right to make unconditional application to the employer to return to work during the first six months of a strike. Nothing governs returning to work if the strike goes on longer than six months.

The bill's provisions would require reinstatement of employees at the end of a strike or lockout, provided the employer has sufficient work for the employees. If there isn't sufficient work for all employees, the employer must reinstate employees according to their seniority as defined in accordance with the collective agreement's layoff recall provisions. If there are no recall provisions, reinstatement must be in accordance with each employee's length of service as determined at the commencement of the strike or lockout. Similar provisions are already in place in British Columbia, Manitoba, Quebec and Prince Edward Island. They help to eliminate some of the most emotional issues in negotiations to conclude a strike or lockout.

The bill also proposes continuation of benefits granted under the expired collective agreement for striking or locked-out employees during a dispute, provided that the union makes all payments required for such continuation. At the union's option then, employees could continue to receive medical, dental, legal or other such benefits.

The next area of reform is the preservation of bargaining rights. The bill proposes revisions of the provisions in section 64 governing successor rights, which I told you about earlier, in the event of the sale of a business. Currently the provisions of the act require the purchaser of a

business to respect the bargaining rights of a union representing employees of the vendor employer. Further, the act binds the purchaser to any existing collective agreement. If a union is in the midst of an application for certification with the vendor employer, the purchaser steps into the shoes of the vendor employer as a respondent to that application.

The bill extends the obligations of a purchaser of a business. On top of its obligations with respect to an ongoing application for certification, the purchaser would step into the shoes of the vendor as a party to any proceedings before the OLRB, or any proceeding under the Labour Relations Act or the Hospital Labour Disputes Arbitration Act, including collective bargaining notices, conciliation, ongoing labour disputes etc.

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For example, service of a notice to bargain is a type of proceeding under the act. Currently, where a union has served notice to bargain and even if it has commenced bargaining, a sale of the employer's business means that the union must start over with new service of notice to bargain. Under the new provisions, if a union has served notice to bargain and has commenced bargaining with the vendor, the union would not be required to start the process from scratch but could take over from the notice to bargain.

The bill will not bind the purchaser to adopt the bargaining proposals of the vendor. Accordingly, if the vendor and the union have reached agreement on some issues, such as wages and job protection, the purchaser would not necessarily be bound to adopt those positions. This would bring the Ontario successor rights obligations in line with the BC, Saskatchewan, Manitoba and federal statutes.

The bill also extends the definition of a sale of a business to include the transfer of a business from the federal to the provincial jurisdiction. There's a provision for special treatment by the board of the unique factors arising from such a transfer, since you're moving from one jurisdiction of labour regime to another.

The bill further proposes the extension of successor rights obligations in the event of a transfer of a contract from one contractor to another if the contractor provides services to a premise, such as cleaning services, food services or security services.

These provisions are different. These provisions are trend-setting, designed to protect a category of particularly vulnerable Ontario workers. Workers in Ontario's building services sector—cleaners in Toronto's office towers, for example—represent a stable workforce of employees who regularly work at single premises. Although the workforce may be stable, the employer is not. Building owners or managers usually contract with a cleaning service employer to service the building. They might put that contract out to tender on a regular basis. Even where a particular contractor may have provided services at a building for 10 years with the same employees, these employees have no rights to maintain their bargaining agent or their jobs if there's a change of contractor.

I think these provisions should be read with the extensive proposed amendments to the Employment Standards Act governing the same circumstances. The reason for that

is that most of that sector is not unionized. In the cleaning services the figure is something in the order of 6%. Across the sector we're talking about here, the rate of unionization may be 10% to 12%, so what we're talking about here is a workforce that is substantially non-unionized and therefore must rely for its minimum protections on the Employment Standards Act.

Together, the new protections under both acts mean that employees who work in the building will not lose their jobs or their union representation just because the owner or manager lets the building service contract to a different contractor. The ESA provisions require successor contractors to offer comparable employment to employees of the former contractor if work is available and to recognize the accumulated service of these employees. Liability for employment standards-related benefits would be transferred to the successor contractor.

With respect to adjudication by the OLRB, the bill proposes to set out the OLRB power to grant interim relief in pending proceedings. "Interim relief" means on the way to a final disposition. Such relief could include cease and desist orders, for instance. The board might enjoin an employer, might stop an employer from cutting wages pending the board's opportunity to conduct a full hearing into allegations that the employer has breached the so-called statutory freeze position provisions in existing section 81.

Another example might be where the union engages in improper campaigning leading up to a representation vote. The board might again order that the union cease and desist from publishing certain materials or from coercing employees in some fashion.

The board may grant such relief without a full formal hearing. Similar board powers exist in Manitoba and Alberta. The benefit of such a power includes expediting the resolution of acrimonious disputes.

The board will also be given new remedial authority in the event of a breach of the duty on employers and unions to bargain in good faith to make a collective agreement. The board will be permitted to determine one or more terms of the party's collective agreement, but only where it considers that other remedies would not be sufficient to remedy the breach.

Additionally, the board will be able to enforce settlements of any type of proceeding under the act by way of the party's complaint to the board. That power already exists in a more limited fashion.

The bill will provide a new method for the approval of the OLRB's rules of practice. The board's rules will take effect on a date to be named by order in council. The rule-making will become less cumbersome but there will still remain checks on the board's rules development.

The bill also contains provisions for streamlining resolution of construction industry jurisdictional disputes between competing unions. Currently, hearings in a jurisdictional dispute often require 20 or 30 days spread over many months or years. The work in dispute is usually over by the time the board issues a decision. The proposed provisions would permit the board to resolve these matters more expeditiously, and this is based on recommendations of construction industry leaders.

The 10th area of reform is expediting and streamlining the grievance arbitration process. After considering the recommendations of the Swan report, the government proposes clarification of the powers and jurisdiction of arbitrators. Arbitrators would be specifically empowered to grant interim relief, to interpret and apply human rights and other employment-related statutes, and this is intended to codify existing jurisprudence and to ensure a consistent approach by all arbitrators.

The new provisions would state that arbitrators have jurisdiction to determine all questions of fact or law that arise before them. They would be empowered to order particulars and production of documents, to make orders to expedite proceedings and to prevent abuse of process. They will also be permitted to consider submissions in such form or by such method as they consider appropriate.

In British Columbia, where arbitrators have been able to address human rights aspects of grievances for several years, it's considered preferable that human rights issues are dealt with in the context of the continuing employment relationship.

The bill also sets out several provisions designed to expedite the arbitration process. The act's deemed arbitration provision would be changed to refer to a single arbitrator instead of a three-person panel.

Sole arbitrators would be required to give decisions within 30 days; arbitration boards, the three-person boards, within 60 days. The minister would be authorized to make orders to expedite the issuance of delayed orders, including orders related to the payment of the arbitrator.

The bill also creates a new section governing mediation arbitration. Where parties consent and where they have agreed on the nature of issues and disputes, they may request that the minister appoint a mediator-arbitrator. The mediator-arbitrator would of course first attempt to settle the matter. Failing settlement, the mediator-arbitrator would be empowered to carry on to arbitrate the matter with a decision required within five days. It's a fast-track system to try to streamline the process.

Finally, in terms of the overview of the reform, is the 11th point of structuring adjustment and change in the workplace. Recognizing the ever-changing nature of the workplace and the workforce, the bill would authorize the creation of a new service to focus on workplace organization and development of partnerships between employers, employees and unions. Among the goals of the service would be assistance to employers, employees and unions in responding positively to changes needed in the workplace to enhance competitiveness and partnerships.

The service will be developed pursuant to a Ministry of Labour consultation process. We intend to work with stakeholders in settling the structure and purposes of the service.

The bill will also amend the Labour Relations Act to add a duty to make every reasonable effort to make an adjustment plan in the event of closures or mass layoffs involving 50 or more people, and there are several others which I'll cover in the clause-by-clause. The employer would be required to notify the union at the same time as it

is obligated to provide Employment Standards Act notice of termination to any employee.

Where the union requests, the union and the employer would commence bargaining towards an adjustment plan within seven days of the union's request. These provisions are meant to spell out, at the very least, an employer duty to sit down and talk with the union about adjustment issues. The labour board would not have the power to order the terms of an adjustment plan in the event of a breach of the duty to bargain.

The bill also proposes amendments to the Employment Standards Act in order to expand the powers of the Minister of Labour to make orders requiring employer involvement in facilitating the adjustment process, including mandating discussion with employees of alternatives to closure or mass layoffs. The ESA's current requirements for provision of information to the ministry, in the case of major layoff, would be expanded to include whether an adjustment committee had been formed, whether alternatives to layoffs had been considered and the nature of adjustment plans.

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Another area of reform intended to encourage workplace partnerships is a proposal to have a new model for collective agreement provisions requiring regular consultations during the life of the collective agreement. If either party requested such a provision during bargaining, the collective agreement would contain a provision requiring ongoing regular meetings between the employer and the union to discuss workplace issues. It is hoped this provision will encourage the parties to engage in more constructive discussions in the periods between collective bargaining; discussions in those periods shouldn't be limited to just grievance proceedings.

That concludes the overview of what the bill is intended to do under headings.

What I would like to conclude with, and it will take me probably 20 to 30 minutes more, is to examine the sections of the bill. I would, though, like to take you through that in the sense that I think it is important, especially on the substantive areas, that people on the committee understand how the various sections of the bill attempt to accomplish what I said the reform intends to accomplish. I do not believe the Ministry of Labour may have another opportunity to present a technical briefing to the committee before you get into clause-by-clause later on. Hence, I would appreciate the opportunity to take a few minutes to take you through that. Is that agreeable?

To do this, you'll need to follow along. I believe you have copies of Bill 40 and copies of the Labour Relations Act. I'll be mostly making reference to Bill 40, but there may also be some references to the Labour Relations Act. In your materials the Labour Relations Act is Revised Statutes of Ontario 1990, chapter L.2, January 1992.

Bill 40 sections related to the amendment of the Labour Relations Act follow in chronological order of the current act. The act is divided into a number of parts, and I will describe the sections in Bill 40 as they propose amendments to each of the parts.

The parts of the Labour Relations Act are as follows: the preamble, the application of the act, freedoms, establishment

of bargaining rights by certification, negotiation of collective agreements, contents of collective agreements, operation of collective agreements, termination of bargaining rights, timeliness of representation applications, successor rights, unfair labour practices, OLRB enforcement, administration, general provisions, construction industry provisions, and construction industry provisions related to province-wide bargaining.

Let me start with the clause-by-clause analysis, starting with the preamble. If you turn to page 2 of Bill 40, you see bill section 5, which is about two thirds of the way down the left-hand side. Bill section 5 inserts a section 2.1. That's the way this bill works. Section 2.1 will then become the new section in the OLRA, so that there will be a section 2.1 in the OLRA that will say, "The following are the purposes of this act:"

It goes on to set out the purposes of the act, which in summary are to ensure free exercise of the right to organize; to encourage the process of collective bargaining to enhance employees' abilities to negotiate for improvement in employment terms and to enhance cooperative approaches between employers and unions in adapting to economic change and in promoting workplace harmony; to promote harmonious labour relations, and to provide for fair and effective dispute resolution.

I should point out to you that the intent—and there's a drafting issue here I need to bring to your attention—was to replace the current preamble. I'm not sure we've accomplished that. The bill will require amendment to effect the repeal of the preamble. The purpose was intended to replace the preamble. I don't think it accomplishes that, so that is something that should be considered in the clause-by-clause analysis.

The next heading is "Application and Purpose of the Act." If you look at the bill, section 3 at the top of page 2 of Bill 40—again, I'll just go through a few of these till everyone has done this—the bill's section 3 changes the title of the section to allow for the purpose to be in there.

Subsection 4(1) of the bill removes the exclusion of domestics, so that by repealing clause 2(a), you take out domestics as an exclusion and therefore allow them to be eligible for bargaining and unionization under the act.

Agricultural workers: Subsections 4(2) and 4(4) of the bill—again, I'm still on page 2—allow for the future development of a regulation under the act to deal with the inclusion of agricultural workers under the act. I won't turn you to it, but there's a section around page 39 of the bill, subsection 50(3), which would expand the regulation-making powers under section 118 of the act to permit regulations to be passed with respect to agricultural workers and their special cases. But I want to reiterate the government commitment to consider further recommendations of the task force, and a separate statute is under consideration.

Professionals is a bit trickier. Subsection 4(3) of the bill continues the exclusion of certain doctors, so you see a physician to whom the Ontario Medical Association Dues Act etc applies. That continues, then, as excluded from the OLRA. They already have a collective bargaining regime outside the OLRA.

Bill subsection 2(2) repeals the exclusion of professionals under the current definition of "member." Clause 1(3)(a) of the Labour Relations Act is the one that talks about who is a member and talks about who are not members. It excludes most professionals, I believe, with the exception of engineers. So we've repealed the exclusion of professionals under the current definition of "member."

Bill subsection 7(2), which is on page 4 of Bill 40, defines the appropriate bargaining unit for professionals. It follows the current rules for professional engineers, in that if you look at subsection 6(4.1), it would normally put professionals into a separate unit. But subsection (4.2) would permit them to be included in a larger unit, where a majority of professionals desire this and where the board permits it.

How security guards are handled is set out in bill section 13 on page 8. Bill section 13 repeals section 12 of the act. Section 12 is the one—and if you want to look at the OLRA, section 12 is on page 858—that says, "The board shall not include in a bargaining with other employees a person employed as a guard to protect the property...." That's the section that is repealed. Bill subsection 7(3) on page 4 amends section 6 of the act to deal with the appropriate bargaining unit for guards. So back on page 4, you get the rules for guards not being able to be in the same unit if they would be in a conflict of interest, and that the board may include the guards with other guards who have a conflict of interest with other employees.

The next area is establishment of bargaining rights by certification. This part deals with applications for certification and definition of appropriate bargaining unit, and with organizing and picketing rights.

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First, just as a matter of perhaps some important technical note—important only because it happens a lot in the bill—subsection 2(3) on page 1 of the bill defines "voluntary recognition" as occurring "when an employer and the trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties."

That phrase happens a lot in various subsections and parts of the act. To keep it simple, to make it simpler, that phrase has been defined at the front end as "voluntary recognition," and there are a lot of changes here that I will call consequential amendments or technical amendments that simply take that phrase out and put in the words "voluntary recognition." It's a technical change, but because it happens so frequently, I thought it may be important to bring it to your attention.

Combined full-time/part-time units: New subsection 7(1), on page 3, sets out the rules for combining full-time or part-time employees into a single unit and subsection (2.2) requires the board to determine whether the union has the support of the majority of the employees who fall within the unit. Where there's no majority, the board is required to separate the units and determine whether there's majority support in either of the units. Subsection (2.3) exempts the construction industry. Subsection (2.4) requires the board to combine the units if a vote in one or

both, or a voluntary recognition in one, results in majority support in each of the separate units.

The next area is combination of bargaining units. Section 8 of the bill, on page 5, sets out a new section 7 of the act, the powers of the board to combine bargaining units. Subsection (2), just going down the page on page 5, sets out the circumstances where application for combination would be considered together with the application for certification. It deals with pre-existing bargaining units versus proposed bargaining units. It's important to note that subsection 7(3), at the bottom of page 5, sets out three factors the board must consider in deciding whether to combine: whether it would facilitate viable and stable collective bargaining, whether it would reduce fragmentation of bargaining units or whether it would cause serious labour relations problems. Those are the mandatory parts of the test. The board is of course free to consider other factors as well.

Subsection 7(4) sets out rules for geographically separate places of operations, and the board is prohibited from combining units if those circumstances are met. I went through those in the overview. Subsection 7(5) allows the board to amend the certificate or the bargaining unit description in a collective agreement, and subsection 7(6) exempts the construction industry.

The next area is level of support that is required for certification and post-application petitions. Now I'm on page 6, starting with section 8 of the act, which will remove the possibility of post-application petitions. They're removed by the operation of the new clause 8(1)(b) and 8(4), which remove reference to a clause at the end of the act which would have allowed the board to establish a terminal date. Now the terminal date must be the same as the application date, and that wipes out that 10-day period that now permits petitions to be filed. It also makes reference in clause 8(1)(b) to "on or before that date." That's the phrase that takes out the extended terminal date.

The bill now refers to members and "those who have applied to become members." That's just to make it clear, as we go through; that is not a change in the law. The \$1 membership fee is removed by repeal of the definition of "member," and that's back in subsection 2(1) on page 1.

I'll go quickly through these, because I want to make sure that there's some time to talk to you about some of the more critical ones.

Subsection 8(2) lowers the bottom threshold to 40%. Subsection 8(3) maintains the board's current power to order a vote even where the union shows more than 55% support. Section 10, over on page 7, describes how the automatic certification processes work, and sections 9.1 and 9.2 codify the current board practice around 55% not requiring a vote; if a representation vote is taken, there must be more than 50% of the ballots cast.

Subsection 8(4) again prohibits the board from considering membership evidence or petitions after the application date. Subsection 8(6) codifies the board's ability to consider post-application evidence related to impropriety in the gathering of membership evidence or evidence of objection to certification. The board can still consider whether there's been intimidation, coercion, fraud or misrepresentation, and it can consider evidence filed after the

application date related to the voluntariness of membership evidence.

Unfair labour practice certification is covered by the new act, section 9.2 at the bottom of page 7, and it deletes the requirement for adequate membership support as required by the old act. I think I mentioned that to you. The test is now whether or not the employer's conduct is such that you're not likely to ascertain the true wishes of the employees.

Picketing and organizing on third party property: That gets into the reform by bill section 12 on page 8. It provides that organizing and picketing rights on third-party property must be at or near but outside entrances or exits; you see that under section 11.1, subsections (2) and (3). The board may impose restrictions; that's in subsection (5). The board has exclusive jurisdiction to do this, no one else can; that's subsection (6). These rights override the Trespass to Property Act; that's subsection (7).

Sections 14 through 18 at the bottom of page 8 and the top of page 9 are technical amendments that I will not take you through, unless you have questions.

Automatic access to first-contract arbitration, section 19, sets out the new rules for first-contract arbitration by revising section 41 of the act; now I'm in the middle of page 9. Subsection (1) sets out two ways of accessing first-contract arbitration; one is by way of board direction, which is the existing system, and the other is automatic access. These are described as initiation of first-agreement arbitration, and that definition is in subsection (1.1).

Subsection (1.2) allows automatic access only after 30 days have passed since legal strike or lockout and no collective agreement. Subsection (1.3) sets out the current preconditions that must be met for a board direction. Subsections (1.4) and (1.5) are the ones that require the parties to file a collective agreement they would be prepared to sign. The first collective agreement must be settled by private arbitration; the procedures are set out in subsections (3) to (5) on page 10. The parties may choose final-offer selection; that's subsection (3.1).

Subsection (13) prohibits strikes or lockouts after application for first-contract arbitration is initiated. The current rules are restated up at the top of page 11, subsections (13.1) and (13.2); they're split into three different subsections. Bill subsections 19(7) through (10) are consequential technical amendments to ensure that the same rules apply whether parties seek direction or automatic access.

My next area is the duty to make an adjustment plan. If you look at page 12, section 20 sets out the new act's section 41.1. It uses, as you can see in subsection (1), the same guidelines as the Employment Standards Act. In other words, what gets you into this is a mass layoff or closure involving 50 or more people, permanent discontinuance plus any future circumstances as may be defined by regulation.

The employer must notify the union as soon as it is required to give notice of termination to the employees. I am just reading down through the various subsections. The duty commences upon request of the trade union; parties must meet within seven days. Subsection (5) sets out the sorts of provisions, which you may want to look at at the

top of page 13, but none of these are mandated. Subsection (6) makes an adjustment plan enforceable, if you can get the one, as if it were part of a collective agreement, by way of private arbitration. If there isn't any agreement in place, the minister can appoint an arbitrator under subsection (7), and thus it remains enforceable even if the parties are not negotiating a renewal collective agreement.

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Contents of collective agreements: Section 21 on page 13 sets out the deemed provisions to be included in the new act section 43.1. I think I've covered these before in my overview. Subsection (1) is the one that says no dismissal without just cause as a term of all collective agreements. Subsection (2) permits the parties to agree to a lesser standard for probationary employees. Subsection (3) extends just-cause protection throughout the freeze period of collective agreements. This is unique. I believe this is the only deemed provision that goes through the freeze period. Arbitration of disciplines and discharges are committed during this continuation period, and the mechanics to get access to the arbitration are set out in subsections (5) and (6).

Consultation provision: Section 22 of the bill sets out the deemed consultation provisions to be included in the new act, section 44.1. That's on page 14. It requires agreement to use the consultation provision; that's subsection (1). Subsection (2) sets out some of the elements of the consultation. Subsection (3) sets out a model provision, if the parties can't agree, and that model provision is that the parties must meet at least once every two months.

Section 23 of the bill, at the middle of page 14, proposes modification of the current grievance arbitration provision that must be in every collective agreement if the parties can't agree on their own.

Subsection 45(2) of the act would require a single arbitrator instead of a three-person panel. This is intended to speed up the processes and make them work faster and more effectively.

Subsection 23(2) provides for greater use of grievance settlement officers from the ministry's office of arbitration.

There are new powers and duties of arbitrators, which are set out in subsections 45(6) through (9) of the act. They go from pages 15 to 17. I don't have any intention of taking you through them, unless you have any questions, except perhaps to point out that on page 16, subsection (8) are the new powers of the arbitrator. Generally speaking, subsection (8.1) codifies the existing powers that are contained in the OLRA. Section 24, at the bottom of page 17, is a consequential amendment.

I mentioned before that the parties, on consent, can have access to mediation or arbitration, and those provisions are in section 25 of the bill. It requires mutual agreement to use the process, and they must have agreed on the issues in dispute; see subsection (2) at the top of 18. The mediator will try to settle first by mediation and, if unsuccessful, the mediator has all the powers of an arbitrator to settle. That's what you see down towards the bottom of that section 46.1.

Terms of operation of collective agreement: Section 26, at the bottom of page 18, sets out the new sections 49 and 49.1 dealing with voiding of collective agreements.

Voiding of an entire agreement is limited to circumstances where there's been employer interference in the formation or the funding of a union.

Section 49.1 is new. It prohibits collective agreement discrimination. The decision-maker no longer is statutorily bound to void the entire collective agreement because it found there was a discriminating article. The board or the tribunal is free to fashion a remedy and could in fact void the offending article. Sections 27 and 28 of the bill are consequential amendments of a technical nature.

Successor rights start at the bottom of page 19 and go on to page 23. It revises section 64 of the current act. That's the one that deals with successor rights: What are the labour relations implications of the sale of a business? Currently the successor employer is bound only to the bargaining rights of a union's existing collective agreement. The only proceeding to which a successor employer is bound is an ongoing application for certification.

Subsection (2.1), at the top of page 20, extends the concept of successor rights to cover certain proceedings to which the vendor was a party, including proceedings before the board under any act etc. You can see it there.

Subsection (2.2) ensures that the successor employer is bound to the same stages of bargaining as the predecessor employer, and by "stages" I mean stages as defined in the act, whether it's into conciliation or a notice to bargain or a no-board report or whatever, but the employer is not bound to accept the previous employer's positions at the bargaining table.

Subsection (3) continues the bargaining rights and certification proceedings. Subsections (4) through (6) restate current provisions, except for a new clause 6(e) at the bottom of page 21 which adds new power to the labour board to deal with seniority rights in the case of intermingling, where there are two units brought together upon the sale of a business.

The other amendments are consequential.

Federal to provincial sale: Section 30 of the bill, on page 22, adds a new section 64.1 to apply sale-of-business provisions where a business is transferred from a federal jurisdiction to the Ontario one. Subsection 64.1(2) limits the obligations of the successor employer. Subsection 64.1(3) gives the board remedial authority to allow it to tailor its orders to deal with the special circumstances that occur where there is a transfer from one labour relations regime to another; for example, how to handle a nationwide agreement.

Contract cleaning provisions are in section 31. It adds a new section 64.2 which extends sale-of-business obligations in the event of contract tendering. The scope of included services is limited in subsection (1), and the industries that are covered are limited in subsection (2). The provisions work in tandem with the ESA provisions, and there is an issue with respect to retroactivity. It is included.

These provisions were meant to be retroactive. ESA, which I'll do shortly, is retroactive to June 4, and it was intended, I believe, that the OLRA provisions here, the mirror ones for the OLRA, were also intended to be retroactive to June 4.

Unfair labour practices, limits on the use of replacement workers: This is one I'm sure you will be going through in some detail. They are set out in sections 73.1 and 73.2.

Section 73.1 starts at the top of page 23. It defines the limits on the use of replacement workers during a strike or lockout, so 73.1 is all the information I told you about, who can and can't be used in the normal case. Section 73.2 creates exceptions where the use of replacement workers is permitted in special workplaces and in special circumstances. Subsection 73.1(2) requires a secret ballot strike vote of at least 60% of those voting.

The categories of banned workers are set out at the bottom of page 23. First of all, subsection (4), and it's important to go through these: "The employer shall not use the services of an employee in the bargaining unit that is on strike or is locked out." They can't use them anywhere.

Subsection (5), which I refer to for convenience as the new-hire section, covers employees, managers, independent contractors or volunteers hired after the date that bargaining began. They can't be used to do the bargaining unit work or to backfill others who are doing the work of the struck bargaining unit at the struck location or at any other of the employer's locations. Those are two provisions, the striking employees and the new-hires, who cannot be used anywhere.

The following persons cannot be used at the struck location to do struck work or backfill. First of all—now I'm looking at subsection (6)—employees or persons who ordinarily work at other employer premises: You can't bring them in to the struck location. Employees or persons who are transferred to the struck location after notice to bargain is given: You can't bring people in after notice to bargain is given and say they are employees who worked at the struck location. They're viewed as new-hires.

Other non-bargaining unit employees and managers are permissible. That's where I get back to who can be used are the managers, the supervisors and the non-bargaining unit employees.

1550

The non-bargaining unit employees is the major distinction between the Ontario provisions and the Quebec provisions. In Quebec an employer is not able to use the non-bargaining unit employees. In Ontario that is possible under this reform, with those employees having a right to refuse to do the work. The employer can also contract out the work or have it performed at other sites.

I'm sorry; I missed one category. The fourth category under subsection (6), the temporary help, places "A person, whether paid or not, who is employed, engaged or supplied to the employer by another person or employer." As I said, an employer can contract out the work or have it performed at other sites, with the qualifications I've put on it.

Let me just take you through 73.2, which starts at the top of page 25. Section 73.2 permits the use of specified replacement workers to the extent necessary to permit the employer to provide certain human services and to prevent certain harms. The human services are set out in subsection (2), which goes down the page. Harms are defined in

subsection (3), at the bottom of page 25 and the top of page 26, and they apply to all workplaces.

Subsections (4) and (5) require the employer to notify the union promptly of its intention to use specified replacement workers after the appointment of a conciliation officer, and they must give details about the work, as set out in subsection (4).

Subsection (6) sets out the procedures where, if there is an emergency, the employer can go ahead and use the workers. After the union receives notice, it can consent to use bargaining unit employees—that's subsection (7). The employer shall not use replacement workers until it has complied with the notice requirements and the union has not consented to the use of its own bargaining unit employees—that's subsection (9). There's an exception for emergencies in subsection (10).

Disputes around the use of specified replacement workers are resolved by the OLRB, and the details are set out in subsections (11) to (14) at the top of page 27. Parties may agree to use of specified replacement workers for the two situations, either the special workplaces or the special circumstances. Their agreements can only apply to the dispute at hand, they cannot agree to use replacement workers as a condition of settling a strike and agreements are enforceable by the board.

There is a return-to-work protocol set out in section 33 of the bill, at the top of page 28, and I've taken you through it:

Subsection (2) requires the employer to reinstate employees to positions they held before the strike or lockout. There are no time limits. Subsection (3) permits the returning employees to displace replacement workers unless the replacement workers were fellow bargaining unit employees with greater seniority. If there's insufficient work, seniority rules prevail—subsection (4). There is an exception to the use of seniority for startup periods, and that's in subsection (5).

The continuation of benefits: Section 34, at the top of page 29, sets out the new section 81.1 of the act, which provides for continuity of benefits during a strike.

Subsection (1) limits the application of the section to benefits other than pension benefits. Subsection (3) allows the union to continue benefit premium payments. Subsection (4) requires the person who usually receives the payments to accept them, and subsection (6) prevents a person who controls the benefit plan from denying or cancelling employee coverage where the union has tendered payments.

There is a deemed just-cause provision after certification. As I mentioned to you before, it's one of those three cases where there's deemed just cause, and that comes through section 35 at the bottom of page 29.

Very briefly, there are a number of board powers set out in section 36 in terms of powers to settle the terms of a collective agreement where there's a breach of the duty to bargain.

The filing and enforcement of board orders is clarified in bill sections 36, 39 and 56.

Bill section 37 gives the board power to grant interim relief, similar to a court power.

Section 38 of the bill and subsection 42(5) establish expedited informal consultation processes for resolving jurisdictional disputes in the construction industry, in addition to the existing formal hearing process. The difference between the formal and the informal is the word—"consult"—is the informal process. That's at the bottom of page 31.

Then there are a number of consequential amendments which I would just like to read out very quickly. The arbitrator determining damages for an unlawful strike or lock-out has all of the new arbitrator powers. That's section 40. Section 41 gives legal status to unions for enforcement of new types of board orders. Section 42 modifies the labour board chair's powers to deal with hearings, problems resulting from reassignments, appointment expiries, deaths and incapacitation of board members. There's also an expanded list of the types of hearings to which the chair may assign a sole vice-chair to conduct the hearing. It permits the OLRB rule-making through order in council.

Section 43 contains further changes to the board powers regarding the relevancy and admissibility of evidence and submissions and reiterates the elimination of the terminal date and of the \$1 membership fee. Section 44 expands the minister's power to refer questions to the board. Sections 45, 46 and 47 update and expand the non-compellability provisions of the act. Section 48 expands the minister's authority to delegate to other officials in the ministry other than the deputy.

The regulation powers of cabinet are expanded by section 50 of the bill to address payment of arbitrators, the application of the duty to bargain an adjustment plan and the exclusion of the agricultural workers. Sections 51 to 54 are consequential amendments to the construction industry, which indicate the prohibitions on the use of replacement workers apply to this industry.

Please note that section 57 of the bill is in error and will be deleted. The level of support required for automatic certification in the construction industry is intended to remain at 55%.

The Employment Standards Act: Sections 58 through 63 amend the Employment Standards Act by binding the crown, so the crown is covered by the cleaning services provisions etc. Section 59 creates successor employer obligations for contractors who provide services related to the servicing of premises, such as building cleaning, food services and security services. These obligations are effective retroactive from June 4, 1992, as are the comparable ones in the OLRA.

Section 60 expands the circumstances under which the minister may require an employer to participate in adjustment measures and section 61 broadens the minister's authority regarding delegation of powers.

There are two changes to two other acts. Section 62 authorizes the minister to refer any question relating to the exercise of his power under the Hospital Labour Disputes Arbitration Act to the OLRB; for example, whether an employer is a hospital. Under the Occupational Health and Safety Act, section 63 amends subsection 50(7) of the act to allow an arbitrator to substitute a lesser penalty for those specified in the collective agreement. One that was missed I mentioned in my overview, the setting up of an advisory

service. The setting up of the advisory service is provided back on page 1, subsections 1(1) and (2).

I think in slightly less than the time I was asked, those are my comments, Mr Chair.

The Chair: It certainly was. Thank you. I would put this to you. You were kind enough to share what were obviously designed only as speaking notes for your reference to the committee members so that they could follow you. The committee would like to make that an exhibit. However, you may want to prepare it—

Mr Thomas: Take out the references to Tony.

The Chair: —so that it can be made as an exhibit and if you could have your staff bring it tomorrow, we'll make it an exhibit then, appreciating these were merely your speaking notes that you shared with us.

Another thing that's been pointed out is that if you look at Bill 40, and this is in reference to your clause-by-clause consideration, page 32 of the bill, which deals with section 38 of the bill, in subsection 38(3), referring to subsection 93(4), subsection 93(4.1) speaks of subsection (8) and then goes on in subsection 38(6) to speak of subsections 93(7) and (8) of the act being repealed.

Mr Jerry Kovacs: If I can answer, Mr Chair, there are numbering errors in section 38 of the bill. That's one of them that you've pointed out. In fact, the reference in what would be subsection 93(4.1) to subsection (8) leads you down to what is subsection 38(6) of the bill lower on the page there. Do you see that? Subsections 93(7) and (8) are repealed. There is a substitution, subsection (8), that should be fitted into the bill. It required consequential amendment because of this new consultation process. It's been reworded, and at the clause-by-clause motions phase of the committee it should be addressed.

The Chair: Thank you, Mr Kovacs. Mr Offer, there's an hour and 20 minutes per caucus. If any caucus doesn't use all of its 20 minutes, its remnant of time will be shared equally by the remaining caucuses.

1600

Mrs Witmer: How long are we going on?

The Chair: We're going till 5 o'clock.

Mr David Turnbull (York Mills): Can I just ask a question, Mr Chair?

The Chair: Sure.

Mr Turnbull: Are we going to go around with questions or are we going to have blocks of time?

The Chair: There's 20 minutes per caucus. A caucus, as far as I'm concerned, can use that all in one 20 minutes or can rotate, because discussion may generate other questions. But each caucus is going to have 20 minutes.

Mr Offer: Your previous comment with respect to the allocation of the 20 minutes is quite helpful. Just on a preliminary point, the minister made a statement earlier on. I wonder if we have that in written form, which would be marked as an exhibit, or whether we do not.

The Chair: That wasn't provided to the committee. However, the clerk will ask the minister's office if it can provide it, so that will be an exhibit too if it's provided.

Mr Offer: Thank you for your presentation. I have a few questions and I recognize that we don't have the greatest amount of time to deal with them. My opening question deals with third-party property, the private property aspect of the legislation. I think it's found in section 11.1.

There's been a great deal of concern with respect to that particular aspect of this legislation. It states that picketing or organizing can't take place, basically, on private property to which the public normally has access. I think in the press releases, and in fact even in the examples you use, is the mall setting.

My question is, if we can envisage a department store: In department stores today there are areas which are licensed out to travel agencies, cafeterias and photo operations, for instance. Would this provision permit picketing and organizing within a department store? Let me rephrase it. For example, for a cafeteria that is organizing or picketing, would the provisions permit that picketing just outside the entrance to the cafeteria within a department store operation?

Mr Thomas: The answer is yes, and the limits on that could be set by the labour board following the provisions that are in the balance of the clause.

Mr Offer: So in essence, picketing would be permissible within the department store just outside the licensed operations.

Mr Thomas: That's right.

Mr Offer: Was there any discussion by the ministry over the impact that might have in terms of the operation of the department store? Were there any discussions that had taken place between the ministry, if you're able to share that with the committee, as to what the ramifications would be of the department store, wherever it is or wherever it would be located, to its customers, if that in fact were the case?

Mr Thomas: The only discussion I'm aware of, Mr Offer, is whether you were in a better situation, from the department store's perspective, to have the picketing or the organizing contained around the travel agency or to have it happen at the entrance of the department store.

Mr Offer: In the current legislation there is what is called a preamble to the legislation. You have spoken to that. Could you share with us what the board has done with the preamble to the legislation as it currently exists? In other words, has it been used by the board in the determination of any decisions?

Mr Kovacs: It has been used both by the Ontario Labour Relations Board and by the Ontario courts in interpreting particular sections of the act when there has been difficulty on the board's part or on the courts' part in interpreting the intent of the particular provision.

Mr Offer: The reason I ask the question is that was the reason provided for the inclusion of a purpose clause. I know this is overly technical, but right now what we have is a preamble which stands somewhat outside the act used in essence by the board to help in its deliberations. What is proposed is something dramatically different which has caused a great deal of concern, that is, the existence of a purpose clause located within the act ostensibly for the

same reason. The concern I have heard is that the usage of that clause by the board will be much more dramatic than exists now through the preamble clause.

My question is, if the board has used the existing preamble for purposes of aid for purposes of interpretation, then what is the need for a purpose clause contained within the legislation?

Mr Thomas: I believe there are several responses. One of them is that the purpose clause is certainly more specific than the preamble and outlines some activities I believe the government wishes to see happen in workplaces around cooperation. There are references in the purpose clause to matters involving productivity. There are some matters that are not contained in the current preamble and that are therefore expanded on by the purpose clause. Whether it's a purpose clause or a preamble, it's intended to be used only for the purpose of resolving ambiguity where there's uncertainty with the statute.

My understanding, and perhaps Mr Kovacs wishes to say a few words on this, is that the preamble and the purpose clause tend to have similar weights; at least that is what one gleans from the Interpretation Act.

Mr Kovacs: That's correct. The other point that might be made is that in more recently developed or newly developed legislation, the trend of legislative counsel has been to use a purpose clause rather than a preamble. You might refer to the Pay Equity Act as the most recent example.

Mr Offer: I'm rushing through some of these questions very mindful of the time. I want to talk about the part-time/full-time issue. I listened closely to what was said on the issue, Deputy, and I'm wondering if I can give you an example. Let us say there is a workplace wherein there are 50 part-time workers and 100 full-time workers. A vote is taken for combination which ends up with, let's say, 76 voting in favour; that's a majority. Under the legislation, those two units would then be combined. Is that correct?

Mr Thomas: The idea is correct. It has to be 55%. The principle is correct, the percentage is wrong.

Mr Offer: I thought it was a majority, but if it were 55%—

Mr Thomas: Take it up to a number that would get you over 55%, 90 or something.

Mr Offer: Let's say 80, because I think that would do that. If the breakdown of the vote is such that 20 part-timers have voted in favour but 60 of the 100 full-timers have voted in favour, would there be a combination?

Mr Thomas: Yes. It's taken across the combined bargaining unit, which is treated as one for that purpose.

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Mr Offer: The third part to the question is that obviously we now have a vote where a minority group has been taken into the larger organizing unit. In other words, not a majority, in fact a significant minority of part-time workers, do not want to be part of this unit, yet it is carried because of the overwhelming majority of full-timers. My question is: What is the rationale for the overriding of the interests of part-time workers in that scenario?

Mr Thomas: The rationale is that the concept of community of interest applies to the whole group: 150 people are seen to have a community of interest, and a majority of them, or 55% of that community of interest, choose to want to have this consolidated into one or choose to vote in favour of unionization. This, by the way, is the practice that's adopted, as I understand it, by a number of other boards across the country.

Mr Offer: I have a concern with respect to the deletion of the community of interest concept, because under the proposed legislation the rights and choices of part-time workers in this one scenario are overridden by the legislation. Personally, I think that is a major difficulty. I know my colleague Mr Cleary has a few questions.

Mr John C. Cleary (Cornwall): Thank you for the presentation, Deputy. It's my understanding that an agricultural committee was set up a considerable time ago to review Bill 40. It's my understanding that a copy of a report signed by all parties has been handed to the minister some five weeks ago. What is the status of that report now?

Mr Thomas: The minister's agricultural task force is now proceeding on to its second phase. Its first phase produced a number of recommendations—I believe six. The government has indicated support for five of the six and is looking very seriously at the sixth, which deals with a separate statute. It is now into another phase over the month of August, sir, where we'll look at other issues that would be particularly important to the agricultural industry successor rights or whatever. I would expect a final report will come out in due course.

Mr Cleary: Has this gone back to the same people who prepared the report, or is there another group?

Mr Thomas: I think that has not been decided. They are going to be meeting very shortly to determine whether or not they are going to reconstitute themselves.

Mr Cleary: Will whatever comes out of this not be part of the bill? Will it be a regulation after that?

Mr Thomas: No. It depends on what comes out of the deliberations. As I indicated, the government has given its commitment to look seriously at a separate statute. If that is the case, it will be a separate statute.

Mr Cleary: A separate statute?

Mr Thomas: If that's what comes out of the government's deliberations after hearing from the task force.

Mr Cleary: Would you expect that it would be in place by the time the bill comes back to the House?

Mr Thomas: I'm not sure of that. Would you like me to undertake to find that out for you, sir?

Mr Cleary: Yes, I would, because there's a lot of confusion out in rural Ontario about what's going on with agriculture. There are a lot of different stories out there and I'd like to get the right one.

Mr Thomas: Mr Cleary, could I get back to you on that? My colleagues here say it's doubtful that it will be ready that quickly, but I'd like to confirm it and get back to you, if I might.

Mr Cleary: Okay, thanks. In your brief you say "certain key human services" on the top of page 25. Right now, as you know, municipal social services departments all over this province are doing a booming business. Would they be included as a key service as well—you mentioned correctional institutions, halfway houses—if they were struck?

Mr Thomas: It depends on which ones you're talking about. Could I give you some examples, Mr Cleary, of what we have talked about when we've talked about defining those a bit more clearly? If we're talking about the first one, secure or open custody, the kinds of examples we might be thinking of under there would be institutions like correctional institutions, halfway houses or detention centres. Under the second, residential care for persons with behavioural or emotional problems, we might be thinking of group homes or halfway houses. Under residential care for children in need of protection, it might be custody situations.

In services to aid persons described in those previous two paragraphs, we might be talking about in-home nursing and attendant care, light skills training, whatever. Under the emergency shelter or crisis intervention services, we might be talking about investigation of complaints or counselling. Under emergency dispatch services, we might be talking about the 911 service. I tell you that to indicate to you that I think the answer to your question is that it depends on the kind of service being provided and whether the municipality is providing a service that would fit within those kinds of examples.

Mr Cleary: I think it's a pretty important question, just as important as some of these other services here, because when a municipality administers social services, if those are shut down by a strike, then what happens?

Mr Thomas: My answer is that if those social services are the ones that are covered by those seven numbered paragraphs or some of the examples which I've tried to give you, then those particular services would gain the protection, if you will, from the employer's perspective, of section 73.2.

Could I just add a point? It's perhaps important to indicate that in coming up with this list we consulted with the ministries of Health, Correctional Services, Community and Social Services and Management Board through inter-ministerial meetings. We also talked to providers of critical services such as utilities, municipalities and employers providing children's aid services and various social services to vulnerable persons.

Mr Offer: Mr Chair, how much time do I have? A couple minutes? My question has to do with the 60% strike vote, which would exclude the prohibition. I'm sure you are provided with a number of pieces of information as to what the percentage obtained on a strike vote is. Can you tell me whether, first, you have that information and, second, why 60% was chosen?

Mr Tony Dean: We don't have that information available right now; we can look into it for you. The 60% was chosen mostly in response to concerns raised by people in the business community about the restriction on the

right of employees to do struck work during the work stoppage. The 60% was considered to be an appropriate buffer which signified a sufficient magnitude of support for a strike in connection with the access to the replacement worker provision.

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Mr Offer: One final question, just as a response to that answer: I've been told by a number of people that strike votes of less than 85% or 90% would probably be terribly uncommon. It would never be anywhere near 60%, but even if it were 85% or 90%, they would still be quite safe. My last question is whether you are able to inform me on an issue which has caused a great deal of comment from many people; that is, impact study. Have there been any studies conducted by your ministry, the Ministry of Tourism and Recreation, the Attorney General, the Ministry of Industry, Trade and Technology, the small business directorate or any associated, affiliated ministry dealing with what these changes may mean to their ministries and the business climate in this province?

Mr Thomas: We have information, much of which I've gone over with you this afternoon, about the strike record in Ontario, for example, and the use of replacement workers. We have talked to academics about the extent to which this may or may not increase the rate of unionization. You will appreciate that you get different answers depending on whom you talk to.

I guess, Mr Offer, the problem I have with being able to respond the way you might like me to respond with respect to economic impact studies is the fact that there are just so many variables connected with what makes a society, a province, a place to invest in or not. Even within the OLRA reforms, I would expect there would be some competing debate—I'm sure you'll hear that in the hearings over the course of the next five weeks—as to the extent to which replacement worker provisions are viewed by the business community as something that would cause it to reconsider a decision to invest.

On the other hand, there are provisions in the Labour Relations Act that deal with encouraging better workplaces and improving the labour relations climate. The extent to which that is successful is obviously just as speculative, and whether it will generate new jobs is just as speculative too.

When you add to that the other 20 or 30 factors people look at when they decide whether they're going to invest in location A or location B, including infrastructure, the calibre of management, the labour relations climate, and generally speaking all the things that go into the investment economy, I have not found anyone yet who is able to isolate the Labour Relations Act reforms and come up with a definite number or even a range.

The Chair: Thank you, sir. Mrs Witmer.

Mrs Witmer: I'm going to let Mr Turnbull go first.

Mr Turnbull: Deputy, perhaps I could pursue that same line of questioning. To the extent you're saying there have been no impact studies, without getting into the semantics of whether it was a study or a poll or a conversation or some presentation that was made to you, could you describe to me the essence of the advice you've gotten

from the various factions and tell me what the sources of that were and how many such pieces of advice you have received over the period of time you've been working on this proposed legislation?

Mr Thomas: We have no information that would isolate job increases or decreases or investment increases or decreases for the reasons I've mentioned, Mr Turnbull.

Mr Turnbull: Do you not find it rather strange that the government would proceed with legislation of this magnitude without at least attempting to do some sort of study, from your experience with the ministry?

Mr Thomas: I've tried to explain to you, sir, what the difficulties are connected with trying to do the kind of economic impact study you're talking about. Whether I would find it strange that a government should or should not proceed with respect to a piece of reform that does not have the kind of economic impact study attached to it that you would like to see is difficult for me to answer.

Mr Turnbull: In refuting the privately generated statistics on job losses, what was the basis of the minister's comments? You must have briefed him prior to such questions.

Mr Thomas: There were issues that we identified that had to do with the methodology used in doing those surveys. There were questions about the timeliness of the surveys, as I recall. Perhaps my colleagues wish to add to this, but there were questions around the timeliness of the data. The data, I think, in one survey were based on the previous reforms as proposed in the discussion paper and then the reforms changed. How one assesses the extent to which changing the reform changes the economic impact is an interesting question. It's probably even more difficult than trying to answer the first question about why can't there be an economic impact study that does what you'd like it to do.

Mr Turnbull: Deputy, to the extent that it's clear there are no full-blown econometric models of the Ontario economy, as there are none of any of the provinces, is it not normal practice by ministries to conduct surveys of impacts of legislation or economic policies where there are certain assumptions built in, even if, to use the minister's own words, they are heroic assumptions?

Mr Thomas: You will appreciate that my three months as Deputy Minister of Labour have not given me a full experience in this. But in the time I've been there I have observed, for example, that where we're dealing with something like minimum wage, there are attempts to isolate what happens in terms of minimum wage increases, and that becomes itself somewhat speculative, but there are a sufficiently small number of variables that it is at least possible to do some of the guesstimating that would come out of it. But if I translate that to something like the Labour Relations Act reform and in the context of all the other factors that deal with investment in the economy, we have not been able to come up with—

Mr Turnbull: Was there a suggestion from those discussions that there would be a net job loss?

Mr Thomas: From which?

Mr Turnbull: The discussions you've just described.

Mr Thomas: On minimum wage?

Mr Turnbull: Yes.

Mr Thomas: It was uneven.

Mr Turnbull: Further, have you had any discussions with the international investment community on the impact of the Ontario labour relations changes?

Mr Thomas: I haven't, no.

Mr Turnbull: Has anybody in your ministry or any of the other ministries, to the best of your knowledge?

Mr Thomas: I don't know of any.

Mrs Witmer: I'd like to pursue this line of questioning. Mr Turnbull referred to meetings with the international community. Deputy Minister, I know that you had a June meeting in Detroit to discuss Bill 40. I'd like to ask you who was present and what the reaction was from the people you met with regarding Bill 40.

Mr Thomas: I don't know who was present. There were 30 or 40 business people from a variety of industries in the Detroit area. My purpose in going down there was to explain to them what is the reform, to basically take them through an abbreviated version of the middle part of the presentation I've given you this afternoon. There were a lot of questions asked about the reform. There were some concerns expressed by some of the people there. I think people also appreciated the fact that the government had come down and explained to them what was happening with respect to labour relations reform.

Mrs Witmer: I would ask you specifically, because I know there were concerns expressed, what type of concerns were expressed by the American investors regarding Bill 40?

1630

Mr Thomas: I don't recall all of the comments that were made, but certainly from the automotive community there were some concerns expressed about whether the replacement worker provisions would impact on just-in-time inventory situations. That was one I remember.

Mrs Witmer: I guess I find it—

Mr Dean: Perhaps I could supplement what the deputy minister is saying, both in response to Ms Witmer and Mr Turnbull. I think it's important to go back more than several months to the pre-consultation period in which we had discussions internally at the ministry about the whole issue of impact.

It's appropriate to put on the record that a considerable amount of attention was given to the impact of these proposals. You'll know we went to Noah Meltz, a Canadian expert in industrial relations at the University of Toronto, and asked him to try to help us draw the parameters of impact. His advice, as you'll know—and the deputy's talked about it—was that the whole issue of economic impact, particularly in the early stages of policy development, is enormously complex and that a large number of factors influence impact.

Our own studies internally—the accumulated expertise, if you like, of people at the Ministry of Labour—suggested

that in our own analysis by far the large majority of the proposals outlined in the discussion paper would have a very limited cost impact on employers. Some would marginally raise costs, others would marginally reduce costs, but the cost impact was expected to net out and be negligible.

It was recognized, though, that there would be a debate about some of the more major proposals, a limited number of them, about their cost impact and their impact on employers. The debate about those costs would for the most part turn on the perspectives that the participants to the debate brought on the question of the impact of unions on the productivity and competitiveness of an enterprise. That, of course, is a debate that has been entered into which much has been written about but which remains unresolved. For the most part, the studies we looked at—and we make them available—suggest that union presence at the enterprise level does not impede the competitiveness or productivity of an enterprise and in many cases has been proved to enhance it.

Having done some of that limited work, the attempt was made by the ministry and the minister to design a consultation process that would in fact take the issue of impact out to the players in the system, that would go directly to employers, unions, community groups and employees and say, "Look, here, as precisely as we can give them to you, are the preferred options in as much detail as we can before we prepare a bill."

That was put before the public and, as you've heard, some 300 or 400 meetings were held. In that context we discussed impact with employers, unions and employees themselves. I think it's fair to say that the very significant amendments made when the bill was introduced on June 4 were prompted and initiated by much of what we heard about impact, particularly on employers, the real impact, both economic and otherwise.

In addition to that, during those consultations and learning from employers about impact—as we moved around the province, we actually conducted some of our own studies and you'll know we took a considerable amount of time and put an enormous amount of energy into looking at the anticipated impact of the replacement workers legislation.

Mrs Witmer: I guess I would like to see some of those studies the government says it has done. It's great to talk about impact studies that you have done. However, you have never made any of those studies or figures available to anyone in this province, obviously, other than yourself. You continue to put down the studies done by others, yet there's an unwillingness to share the information you say you do have. Until such time, there's great disbelief that much has been done to prove one way or another the economic impact.

Mr Dean: If I could just respond, and I'll close my remarks, in looking at the impact of the replacement workers legislation, we actually talked to every employer and union involved in work stoppages throughout all of 1991. Some of the results of that study have been mentioned today. It was an in-depth study. It is available. If you haven't seen

it, we can provide it to you today. Anyway, I'll end my remarks there.

Mrs Witmer: I can tell you I continue to be disappointed that the government hasn't been able to construct an economic impact study on a piece of legislation that seems to be having such a detrimental impact on the economy in the province. It's not only the cost to employers; I think what we're most concerned about is the cost of jobs to workers, present jobs and future jobs, jobs which simply will not be created in this province because people are not willing to make an investment here. We've created a barrier around our province, and people are feeling very uncomfortable.

I'd like to go to the replacement workers section. You've talked here about the individuals who do have the opportunity to go into a plant. Obviously there's a great deal of concern in some businesses that if they're not allowed to continue to operate, the businesses could, in very short order, be forced to close because of the just-in-time delivery system. Would family and friends of an employer have an opportunity to go in and help that individual continue with his or her operation of the plant?

Mr Dean: If family or other volunteers were used to supplement the existing workforce prior to the dispute, there is nothing in the act that would prevent those categories of employees or helpers continuing to do that work.

Mrs Witmer: I guess that's really not my question. Would those individuals, even though they've never been there before, in an attempt to continue to keep jobs available for employees, be able to go in and help that employer?

Mr Dean: Not on the current wording of the bill.

Mrs Witmer: Really it's almost impossible then for an employer to continue to keep his or her plant open if there's a time line he or she needs to meet.

Mr Thomas: I'm sorry. That isn't the conclusion our statistics demonstrated. I attempted to point out—

Mrs Witmer: Do you have those statistics that you could share with me?

Mr Thomas: They're in your materials. I read them out in terms of the percentages of strikes. I think I went through all that with you.

Mrs Witmer: But that was just for the one year?

Mr Thomas: Yes, but it was a very in-depth study for that year.

Mrs Witmer: But that was based on just the strikes that took place in 1991.

Mr Thomas: That's right.

The Chair: You're referring to page 21?

Mrs Witmer: Yes.

Mr Thomas: Yes.

Mrs Witmer: With this new Bill 40, obviously there could be quite a change, because so much of the legislation is going to be changed and the impact could be quite different. I don't think it would be indicative of what might be happening in the future.

Mr Thomas: No, but if employers' behaviour continues in the future the way it has in the past, and they end up

using replacement workers, which we would prohibit in the reform, to the same degree they used them in 1991, the number of actual times a workplace would be unable to operate as it would have in the pre-existing reform would be very small. I think the number is something like 19 cases out of 94 in a whole year.

If I could just respond to your further comment, I guess that's one of the problems, Ms Witmer, we have in trying to untangle the various factors that all go into the economic impact study you're talking about. In fact, one could make the case that 19 work stoppages in a year in a province the size of Ontario, with 4.5 million workers, is not a large number of work stoppages, and therefore the economic impact statement coming out of that would be negligible.

1640

How does one measure the economic impact of employers and businesses concluding that the reform is going to be too problematic for them and therefore the message comes out that OLRA reform itself is going to be bad because businesses are not happy with what's happening with the government? How one ever begins to assess that factor, I don't know either, and I don't know how one can isolate it any better than Mr Dean has said that we've tried to do.

There are a number of aspects of the reform, as I tried to point out, that encourage cooperation, that over a period of time hopefully will encourage the workplaces to become better workplaces. The extent to which that is helpful to the economy—certainly I can't speak for this government, but I believe from my discussion with the Minister of Labour and his colleagues that the government believes the OLRA reform is part of an economic renewal piece to the extent that we're talking about productivity and cooperation, and the studies that seem to suggest that workplaces where workers have a say are as productive or more productive than those where they don't.

Now that's a matter of intensive debate, and I don't intend to get very far into it except to indicate to you that there are competing interests that make the economic impact study very problematic. I think the stats we have on replacement workers, compared to what people think might happen, help to make my point.

The Chair: Very quickly.

Mrs Witmer: You indicated there was a better relationship in unionized workplaces between employers and employees.

Mr Thomas: No, I didn't mean to say that. I believe that this government believes this particular piece of reform contains elements in it, whether it's a workplace advisory service or duties to consult or whatever, that over a period of time will get the parties working more closely together.

I believe you can find lots of examples of unionized workplaces where the productivity is bad and you can find lots of examples where it's good, and you can do the same thing in a non-unionized workplace. I'm not trying to draw conclusions. I'm just trying to explain to you what I think Mr Mackenzie would be saying if he was here: what they

hoped came out of the cooperation and partnership parts of the reform.

Mr Brad Ward (Brantford): I would like to thank you for a very in-depth report from a technical standpoint. I'm sure it clears up any misunderstandings that perhaps some of the committee members or the general public had about labour reform. I don't think anyone will argue the point that the workforce or the workplace has changed dramatically over the last 20-odd years.

On page 15 in fact you use some statistics as they pertain to part-time workers doubling in capacity from 1975 to 1991, 430,000 to over 800,000. Part-time workers now form 17% of the province's workforce, and two thirds of the employees who took up part-time work were women. I'm assuming those statistics are correct.

Part of the labour reform is allowing the combination of the full-time and part-time in the one bargaining unit, or recognizing, as you said on page 14, that full-time and part-time may share a community of interest. I believe that this aspect of combining full- and part-time workers into one bargaining unit is in existence in every other jurisdiction in Canada. Is that correct?

Mr Thomas: It's in existence in most other jurisdictions.

Mr Ward: Most other?

Mr Thomas: I don't think it's in existence—I can check that for you right now. No, you're right, all jurisdictions in Canada permit combined unions of full-time and part-time employees.

Mr Ward: Both federal and provincial jurisdictions?

Mr Thomas: Yes. When we survey, we survey them all.

Mr Ward: So this specific aspect of labour reform is simply catching up with what everyone else in the country is doing.

Mr Kovacs: If I may add a point to that, Mr Ward, you're correct. The legislation is intended to address an anomalous line of jurisprudence that the Ontario Labour Relations Board has followed for some 40 years. In every other jurisdiction labour boards have determined that part-time and full-time employees together form an appropriate bargaining unit because they share a community of interest.

It's in Ontario only that the labour board has maintained an approach adopted originally some 40 years ago, holding rather differently that part-time and full-time employees did not share a community of interest. It's only in Ontario's statute that legislative action becomes necessary to bring the Ontario approach into line with the jurisprudential approaches in other jurisdictions.

Mr Ward: In this specific aspect we're catching up with the rest of the country and recognizing the realities of the changing workforce and workplace.

Mr Kovacs: That's right.

Mr Ward: Just a further question of clarification, if I may. During the certification process when a group of employees of a particular business make the conscious decision whether or not to sign and join a union—a very tough decision, I think, that we can all recognize—if 40% to less than 55% agree there is a need, for whatever reasons, to

join a union, and collectively make that decision, but it does not achieve 55%, a representation vote takes place?

Mr Thomas: That's right.

Mr Ward: What process would that include? How is that done?

Mr Thomas: The process is set out in the act, but to oversimplify it greatly you'd say it's a secret ballot process.

Mr Ward: There is also the secret ballot process that takes place during a strike vote, again a very tough decision employees must make. Is that correct?

Mr Thomas: Yes, that's correct.

Mr Derek Fletcher (Guelph): Thank you, Mr Thomas. It was a very good presentation. Let me just get something cleared up as far as what you were saying is concerned. Because of the different variables that are impacting on business today, an economic impact study strictly on labour legislation such as what we have here would be irrelevant or it wouldn't even be able to be done strictly on this reform.

Mr Thomas: Yes. There's no disagreement with anybody in the room that if one were available it would be relevant. I'm simply indicating there are a number of factors one needs to take into account in isolating out the labour relations reform from all the other things that are going on in a province at any point in time, and they make it extremely difficult to draw any conclusions from any such study.

Mr Fletcher: That's what I thought also. On the consolidation in one workplace, let me give you a scenario. Office employees are organized by CAW, the shop floor employees are organized by CAW, but they bargain at different times. This can be consolidated. Would this be at the request of both bargaining units, one bargaining unit, the employer, all of the above?

Mr Kovacs: If I may answer that, the provisions set out in what would be section 7 of the act require that both bargaining units be represented by the same trade union. The application for combination of units in the way you've described could be made either by that trade union or by the employer of both of those bargaining units, again represented by the trade union. Before determining consolidation in that example you've given, the board would have to turn to the three mandatory factors that must be considered, which the deputy reviewed when passing through section 7. Those are whether the combination would facilitate viable and stable collective bargaining etc.

Mr Fletcher: Another question: Are these amendments banning the use of petitions? Are they saying petitions during the certification can never be used, or are petitions still able to be used by employers?

Mr Thomas: They're banning the use of petitions that happen after the date of application for certification, but evidence for or against the union is permissible prior to the date of application.

1650

Mr Fletcher: So you can still petition prior to the date of application.

Mr Thomas: Yes, that's right.

Mr Fletcher: One more question: As far as the first-contract part of this legislation is concerned, is it 30 days after a legal position of strike or 30 days after a union has been on strike? Either one? In other words, if my union can go on strike as of midnight tonight, I can petition within 30 days.

Mr Thomas: No. It's 30 days after you're in a legal position to strike; 30 days after the no-board report.

Mr Fletcher: So I have to go the 30 days before I can ask for a first contract, before we can access that part of it.

Mr Thomas: That's right. You will have been through the conciliation process. There will have been a no-board report, there will be 14 days that have happened since that no-board report, then you're in a legal strike position. Then 30 days after that, when you apply, if you use the automatic access process—remember I said there were two processes. If you use the new one, you don't have to go to the board for direction, but the provisions contemplate the filing of a collective agreement that you would be prepared to sign.

That is a rather unique provision which we expect will encourage the parties to be serious about collective bargaining, because they're going to have to know what sort of agreement they are prepared to sign. They're going to have to know what are the issues and will have done some serious talking to the other side to be able to do that.

Mr Fletcher: And both parties would present a collective agreement?

Mr Thomas: Yes. One files with the Minister of Labour, and then I think it's 10 days thereafter that the other party must file the collective agreement they would be prepared to sign.

Mr Fletcher: There's one other thing, and I didn't quite catch everything. I think it was non-union employees versus union employees and the right to the courts for wrongful dismissal. Can you just explain?

Mr Thomas: That was back when I was describing the just-cause provisions. One of the reasons why some people wish to unionize is to end up with a collective agreement that provides them with protection so that they cannot be dismissed without just cause. There has to be a very good reason for their being dismissed.

That is not the case in a non-unionized environment. In a non-unionized environment there isn't a just-cause protection. In other words, an employer can terminate an employee and the only issue that will be up for grabs is the amount of money or the amount of compensation the employer might have to pay for having terminated the employee without just cause.

Mr Fletcher: A non-union employee would have to go to the courts for a settlement.

Mr Thomas: Would have to go to the courts and could never get reinstatement.

Mr Fletcher: Right, and would have to pay court costs.

Mr Thomas: Those who are in favour of having a just-cause provision cite that those are the two significant advantages they get out of it. As I said, we have deemed

that just-cause provision in three places now in the collective agreement process.

Mr Paul Klopp (Huron): I find this afternoon very interesting. I'm going to deal a little bit with agriculture, as the parliamentary assistant to the Minister of Agriculture and Food.

I just want some clarification, and maybe a question in it also. The minister has made it very clear in a bit of preamble here when he first said he'd like to see agriculture also reviewed. We showed him that it needs to be handled separately for a lot of reasons, and I congratulate him on setting up the task force.

My experience in the last 10 or 15 years in agriculture has always been that we're a little leery of government and working with it. I know I have said on a number of occasions that I believe we are being heard and listened to and that the agricultural task force is taken very seriously. Even as shown today in your preamble, the government's commitment is that the task force is taken seriously.

Mr Cleary asked when the task force will it get its recommendations. It has to get done by the time we're done. My short experience around here for the last couple of years has been that so far, usually for a bill or whatever, all the bricks have to be in place and then it's passed. I guess there's a feeling that, "Okay, here it comes. We've got to get our work done and get all our stuff done at this task force because we're working along here," putting that undue pressure on agriculture.

The way I understand section 50, and specifically section 118, it allows the task force not to be under the gun, thinking it has to get done its provisions, because it can go along at the speed it thinks it can or cannot go at and we can go along with our work here. Is that not the reason for that subsection? I might be using the wrong terminology, but I just would like to know if that could be cleared up for me.

Mr Thomas: My recollection of the task force report and the minister's statements on it is that he and I believe the Minister of Agriculture and Food have agreed with respect to five of the six provisions that came out of that report, including fairly substantial ones around dispute resolution, using the arbitration or using some non-strike mechanism. He's also committed to look very seriously at a separate statutory scheme.

I believe you're right that the reason for in effect taking agricultural workers out but leaving a regulation tag in was to allow the labour relations reform to be completed even if all of the other issues with respect to the agricultural task force hadn't been worked out, and no matter what came out of the final end of the pipe, it could be handled.

I'm advised that the task force is due to report on the rest of the issues around the end of September. I do believe there are some efforts being made to very quickly decide on the composition and to get down to business on that. But I do think the task force made a number of important recommendations in phase one and it was unanimous, so we're looking forward to moving forward with that.

Mr Klopp: Okay, thank you.

The Chair: Thank you, Mr Klopp. I want to mention just a couple of things. One is that transcripts of this

afternoon or any other portion of these hearings are available to people. Anybody who wants them has a right. They are able to obtain them by calling their MPP's office at Queen's Park or the clerk of the resources development committee at Queen's Park.

Second, people are entitled to things like the briefing material that the deputy minister used today, his overview of the Ontario Labour Relations Act and these amendments, which many people might find valuable in their approach to these amendments. Again, they can call or write the clerk or any MPP's office who can give them assistance doing that.

We're going to be recessing until 6:30 this evening. We'll be sitting until 9 o'clock. That will be televised, so people who are watching now should be prepared to watch it again at 6:30, and of course people are entitled to be

present at these hearings and are welcome here at Queen's Park to sit in on this evening's or any other portion of the hearings.

That having been said, I want to thank the deputy minister, Jim Thomas, Pauline Ryan, the policy adviser, Ontario Labour Relations Act, Jerry Kovacs, legal services branch, and Tony Dean, administrator, office of collective bargaining information, for giving us their time this afternoon and some valuable commentary on this bill and on the legislation that it amends. We appreciate your being here, your candour and your assistance.

That having been said, we will recess until 6:30. Thank you, people.

The committee recessed at 1659.

EVENING SITTING

The committee resumed at 1830.

LEO PANITCH
DONALD SWARTZ

The Chair: It's 6:30 and we're going to start this evening's session. The first participants are Professor Leo Panitch, chair, political science department, York University, and Professor Donald Swartz, department of public administration, Carleton University. Those are the persons scheduled. People, we've got half an hour. The committee's hoping that your presentation and submission will be no longer than 15 minutes so that we can save the second half of the half-hour for questions and dialogue, which are usually a very valuable part of the exchange. Go ahead.

Dr Leo Panitch: We appreciate the opportunity to appear before the committee. Professor Swartz and I are currently engaged in writing the third edition of our book on labour legislation in Canada. Since Professor Swartz came down to Toronto to work on it this week, it was the only time we would be able to appear before the committee together to make a presentation on a subject that we know well, and on a piece of legislation that whatever position one takes in the debate around it, is clearly recognized by all as being of some importance in the political and economic life of Ontario and indeed Canada.

I shall open our remarks by attempting to put this legislation in some historical and comparative context. Professor Swartz will then take over and present our reflections on the positive and negative aspects of this legislation. We shall attempt to leave some time, as you requested, for questions.

There is a certain danger that in the midst of arguments over this or that specific provision of the bill, the Legislature and Ontarians in general will lose a necessary sense of perspective, will not see the wood for the trees. We ought, first of all, to appreciate the significance of the rights and obligations outlined in labour legislation for a liberal democracy such as ours.

The evolution of the liberal societies of the 19th century, which were not democratic, into liberal democratic ones is conventionally understood in terms of mass suffrage, the right to vote, when those without property, those who worked for other people who owned property or who, like women, were deemed to be natural dependents on others finally obtained the right to vote. That was the point at which we conventionally define the transition from an undemocratic liberal society to a liberal democratic one. But the distinction between a democratic and undemocratic regime is not in fact based on the right to vote alone.

No less important in the evolution of liberal democracies is freedom of association, the right of the hitherto socially marginalized or politically excluded to form associations to define their needs and advance their interests through those associations. The very long struggle of working people for political representation in government was matched by an equally long struggle against the legal prohibition of the workers' rights to free association.

This entailed the legal requirement of both government and employers to recognize trade unions as associational representatives of working people, and it required that the independence of trade unions from direct interference in their affairs by government and employers also had to be established.

The long process of winning these rights can be traced as far back as 1872 in Canada, but it was not really until the mid-1940s that the above democratic criteria were met to such a degree that it could be said that a comprehensive, stable policy establishing freedom of association for workers had actually emerged.

The salience of union recognition and free collective bargaining to any definition of "democracy" worthy of being taken seriously was made clear by Justice Rand in his famous judgement on union security in the Ford case in 1946.

As he put it regarding the relations of labour and capital: "In industry capital must in the long run be looked upon as occupying a dominant position.... Certainly the predominance of capital against individual workers is unquestionable; and in mass relations, hunger is more imperious than passed dividends. Against the consequences of that, as the history of the past century has demonstrated, the power of organized labour...must be available to redress the balance of what is called social justice; the just protection of an activity which the social order approves of and encourages." That's Rand in 1946.

For the past 20 years in this country—and this is the subject of our book, which will be elaborated in the third edition—we have seen a remarkable restriction of these trade union rights in Canada through, now, over 100 instances of back-to-work legislation and through wage restraint policies which, by extending collective agreements by government fiat, remove the right to strike, since you can't strike during the term of a collective agreement.

We have seen, in the case of public sector workers, their right to strike often removed for a temporary period, but repeatedly. Changes to labour codes at the provincial level have involved extensive restrictions in a good many Canadian provinces. Essentially, these restrictions have made collective bargaining more difficult from the workers' side; they've made recognition more difficult and they've made decertification easier.

Most Canadians do not know that in terms of complaints carried to the International Labour Organization's freedom of association committee, among the G-7 countries, Canada has one third of all complaints between 1974 and 1991 despite our much smaller population. The United States has 15%, Britain has 19% and Japan has 15% of the total complaints. Canada has 34% of the total complaints.

A great many of these complaints are sustained. Increasingly, in ILO rulings against Canada, and against Canadian governments, for abrogating or restricting freedom of association—and these are UN treaties to which we are subject—the ILO has repeatedly in its judgements introduced a tone of exasperation. Normally, these judgements

are highly diplomatic, but in the Canadian case it is repeatedly pointed out that our governments are not adhering to the international treaties which we've signed in this area.

In light of changing conditions in the industrial structure of the developed societies, in light of the globalization of finance and production, the need for more substance in labour legislation guaranteeing workers' rights to organize, to bargain and to strike is greater than before. It requires more of this rather than less if, in Justice Rand's terms, the balance between capital and labour is to be redressed.

Ontario parties and governments are to be commended for having resisted to some extent this general trend in other jurisdictions in Canada. I make this as a non-partisan statement; neither of us is a member of a political party. In terms of Ontario governments having resisted this general trend in Canada over the last two decades, this has been true of all the parties, certainly since the mid-1980s. But this is a small compliment.

Given a commitment to democratic values, given an awareness of changing economic conditions shifting the balance of power away from working people, the kinds of changes that are, for instance, in Bill 40 should have been forthcoming from any party a considerable time ago. They're long overdue.

Efforts of workers to organize, as we've seen through the 1980s in a good number of sectors, have been continually frustrated. A number of communities have been devastated by the closure of plants or the replacement of workers in struck plants. This is the context, it seems to us, in which politicians of any party need to look at labour legislation at the current moment. It's the context in which we want to look at Bill 40.

We want to ask these questions: What will it accomplish in light of the above considerations of democracy and social justice? That needs to be analysed in turn along three dimensions: What is its contribution to trade union organization and recognition? Second, what is its contribution to redressing the balance of bargaining power in today's economic conditions? Finally, what is its contribution to advancing democratic structures and processes? Donald will attempt to address that briefly in terms of our analysis of Bill 40.

1840

Dr Donald Swartz: Let me begin by talking a bit about the positive facets of the bill. Let me say that in general we find the amendments contained in Bill 40 a step in the right direction. Among the various amendments, the following strike us as particularly significant.

The first set has to do with organizing. Here I'd like to refer to the amendments enabling domestics and other workers to join unions; the prohibition on the use of counterunion petitions as evidence in certification hearings, because those petitions delay the process; the empowering of the labour board to issue interim orders concerning dismissals in the period between certification and the negotiation of a first collective agreement, and the provision of union organizers with access to third-party premises, such as shopping centres. All these things will help advance organizing.

With regard to shifting the balance of bargaining power, we'd like to point to the importance of the anti-scab provisions and the enhanced right of workers to their jobs in the case of lengthy strikes, where previously the right of return to a job lasted only for six months.

Finally, we would like to compliment the government for the clear statement that enhanced employee participation in the workplace is a major purpose of the act. This indeed is a rare and creditable statement. All of these changes should be welcomed by democratically spirited people. The problems with Bill 40 are not the proposed changes in and of themselves. What troubles us and troubles us very deeply is that these changes don't go nearly far enough.

Let us talk a little bit about the limits and inadequacies of the bill. With regard to organizing, there is simply no provision for organizers to have access to company premises or even to the names of employees. This effectively places property rights prior to the right to organize, leaving an inherent imbalance where the object is balance. We give political parties the names of the voters they wish to reach—we post them on billboards and on telephone poles—so why shouldn't we do likewise for union organizers?

The prerogative of the employer to voice his or her opinion on workers exercising their right to organize remains in place. The problem here is twofold. The line between opinion and intimidation is very thin when one is dealing with a relationship between an employer, with all the powers of ownership and management, on the one hand, and unorganized individual employees on the other.

The whole idea of having rights is to actually use them. As citizens, we are regularly urged to vote, rather than counselled not to do so by anyone. To appreciate the point, imagine the effect of a campaign by fathers or husbands some 70 years ago urging women not to exercise their newly gained franchise. Far too much control over bargaining units remains with the labour board, rather than being placed in the hands of those who actually want to organize themselves. Why should others judge who are groups and who are not?

Let me now turn to the issue of more balanced bargaining power. The outstanding failure here is to remove the prohibition on strikes during collective agreements, which is now a feature of any acceptable agreement. This must be seen in the context of the continued and arguably enhanced capacity of employers to introduce major changes into the workplace or to close or relocate that workplace to other provinces or countries, against which workers can take no action. We also note that this prohibition precludes workers from striking in sympathy with other workers. Yet such action could be of significant assistance to groups of workers who, on their own, have little bargaining power. Given the changes in the structure of employment and the growth of many small workplaces, this could be significant indeed.

We are very concerned by the failure to redefine strikes so as to exclude collective work stoppages which are a consequence not of action against an employer but of efforts to participate in the broader political process. After all, not only are employers readily able to engage in political

activity during the workday, even middle-class academics like ourselves work in circumstances where we can readily exercise this right.

We are also dismayed that employers, in contrast to legal authorities, continue to be able to impose penalties, including dismissal, on their employees in advance of grievance or arbitration hearings. This is equivalent in the judicial system to punishments being imposed before trials are held. Exposure to such enormous and arbitrary powers must be acknowledged as intimidating indeed, especially for people whose financial circumstances place them on the margins of life, who, after all, are the people we are trying to include in this legislation.

Finally, with regard to the general thrust towards democracy and participation, we want to note that the proclaimed goal of enhancing employee participation in the workplace, however laudable, is actually given little substance in the amendments themselves. The amendments include no provision that employers provide employees with financial information or information concerning investment or other long-range plans. They provide no requirement that employers bargain with employees in the event of major technological or organizational changes, although without a relaxation in the prohibition of strikes during collective agreements this requirement would not be very meaningful as workers would have no sanction with which to back their words. They make no provision for workers to meet together regularly in their workplaces to consider such information or to discuss their employers' performance generally, ie, some form of independent workplace council. Without any of these measures, where, in what way, is participation in the workplace enhanced?

In drawing your attention to what we see as the major limitations of Bill 40, we are urging you to take a leadership role in the ongoing task of strengthening and deepening the democratic character of our society. This project is quite distinct from the debate about the proper size of government. What is at issue here is not the size of government or its intrusiveness in the daily lives of citizens. The issue is whether we will have the kind of government which is concerned to empower citizens, above all those citizens whose existence is marked by a relative lack of power. This of course includes citizens who work in the public sector, including the government's own employees. The same leadership role must come to the fore then when the government turns its legislative attention to the rights of these workers.

The Chair: Twelve minutes, Ms Witmer; one third of that time.

Mrs Witmer: First question: I believe it was the first speaker who made reference to the fact that increased unionization was going to help prevent plant closures. I'd like to know how you think that's going to happen.

Dr Panitch: I don't think I suggested it would necessarily help to prevent plant closures. I suggested that, in the context of changing economic conditions where we've experienced a great many plant closures, empowering workers who are weakened by the fact that there is this kind of instability in the economy is necessary to redress-

ing the balance of power. We exist in a situation in which increasingly we see very mobile capital.

If workers aren't given enhanced powers in the face of capital mobility in terms of defending their rights to association, their rights to financial information etc, just by standing still, by having their powers not enhanced, they are in a weaker position than they had been before. That was my point.

Mrs Witmer: But it's obviously not going to prevent plant closures.

Dr Panitch: No, of course it isn't necessarily of itself going to prevent plant closures. On the other hand, I'd point out that those jurisdictions which have introduced more restrictive labour legislation have not managed to save their economies in the process; and that's as true of the western provinces in Canada as it is of the Atlantic provinces which have tightened their labour codes, as it is of Minnesota or Wisconsin. It's a patently obvious illusion to anybody who studies the comparative situation to think that this is what saves a given regional economy. There isn't the slightest shred of evidence for tightening restrictions on workers' rights.

Mrs Witmer: You talked about the need to give workers more rights and also to advance the democratic process. I think we would all agree that this bill makes some people eligible for unionization that were excluded before, and we certainly support those provisions. However, in your comments regarding the democratic process, the need to involve workers, enhance their participation in the workplace, would you support an amendment that would make it mandatory that union organizers and employers discuss with employees the consequences of unionization? For example, the union organizer would have to make all 100% of employees aware of what it is to be a member of a union: what the dues are, what's involved in a strike. The employer also would be given an opportunity to—I guess it would open up the process which, as you know, right now sometimes takes place in a very intimidating and secretive fashion.

1850

Dr Swartz: Certainly with regard to unions, yes, they should make all manner of information about the way they operate etc available to members. It's very difficult to organize people into unions if they don't, right? In the spirit of that suggestion, you might well consider amending the legislation to make it mandatory that union representatives in organized plants have the right of access to new employees to explain precisely those circumstances.

With regard to employers, the thrust of our remarks is that it's the wrong way to go because the situation is not one of equals standing together and exchanging views. In most cases, the position of the employer is that one shouldn't exercise this right. Now what we're saying is that this is an inherent part of freedom of association. There should be posters everywhere saying that just as you have the right to vote—you wouldn't dream of someone sitting down with you and suggesting, "Let's talk about whether or not you should exercise your right to vote." We should have posters saying, "You have the right to vote."

We should have posters saying, "You have the right to be a member of a union if you choose to do so," end of story.

The Chair: Thank you. Ms Murdock, please save Mr Fletcher some time.

Ms Sharon Murdock (Sudbury): Okay. Boy, when I went to university I can't remember any professor talking even remotely similar to you, both in the commerce program and in the law program. It's quite refreshing.

Dr Panitch: That's because you studied commerce and law.

Ms Murdock: Continuing on Mrs Witmer's question, we've been hearing from many of the opposition in terms of the certification secret ballot vote. I'd like your comments, if you wouldn't mind, in that regard and also with the provisions under Bill 40 as existing in other jurisdictions, either federally or provincially, individually or collaboratively, if you are familiar with the provisions working within those provinces and how they are working.

Dr Swartz: I'm not sure what the first question was referring to.

Ms Murdock: The suggestion has been made on certification that there be a secret ballot vote by the employees. I don't know how you would work it. It hasn't been suggested whether there would be a time frame or anything like that. But if an organizer went in, the automatic thing would be to have a secret ballot vote and see whether or not those people would choose to form a union without, I guess, any kind of pressure being brought to bear by either the union or management. I don't know how that would happen, but I would like your comments on that particular aspect.

Dr Swartz: This seems to be a call for a requirement that there be a secret ballot vote in all circumstances.

Ms Murdock: Yes.

Dr Panitch: Even when there's 55%, in different jurisdictions there's a different level of concurrence.

Ms Murdock: I don't know. I'm not the one who's proposing that. It's just that if there's going to be organizing of a non-union workplace, there be an automatic secret ballot vote. Any comments?

Dr Swartz: The thrust of this line of thinking is that it be compulsory to hold a vote. I think the whole spirit of promoting the right to organize historically has been that once you get clear evidence of a majority, you don't have to have a vote. A lot of the debate in fact has been over how many people you have to sign up before you're eligible for a vote, because the reality is, either you get 80% or 90% of the people, in which case the vote is redundant, or you put in a lot of time and you've got 30% or 35% signed up.

In a modern city like Toronto where you don't have access to names where people live or access to the employer's premises, you're running all over the city trying to find people, and it becomes a very difficult process. So one of the things experienced union organizers have said is, "Look, our experience has been that once you get 25% or 30% of the people, the chances are you could get 70%, so let's have a vote then." In other words, the issue has been

how much evidence you have to have to be able to have a vote, not that it be compulsory that there be a vote.

The Chair: Mr Fletcher, very quickly.

Mr Fletcher: Thank you, Mr Chair. Just on the question of in Parliament, a lot of people have said, and think—and this is from the propaganda going out—that if this law passes, bang, you're going to have a union instantly, instant union, right in your workplace. When you were talking about in Parliament, it was interesting. You can give people the right to organize, but they have to take that themselves. Noting the demographic changes in the workplace today, with the number of women who are entering the workplace, and part-time workers, do you see that a lot of people are going to take the opportunity? Once they know their rights, do you see a mass unionization of the province coming?

Dr Panitch: I think our view is that despite the debate and polarization etc, this legislation does something, but not a great deal, to make it easier to organize in these circumstances, certainly speaking of part-time workers, smaller firms, larger retail and service sector etc.

The Chair: Thank you. Mr Offer.

Dr Swartz: I'm sorry. May I respond to that question? This is very important. There is an absolute ton of evidence attesting to the desire of people to join unions, whether they work in the banks, in Eaton's, in insurance companies or smaller, more independent operations. They've organized themselves into unions many, many times. The problem is just as much, if not more, that once they get organized, they haven't got sufficient bargaining power to sign a collective agreement, or the unions aren't large enough to organize on a broad enough scale.

That relates to my point about the importance of removing the ban on strikes during the life of collective agreements so that other workers who wanted to help them, who were prepared to sacrifice one or two or three days' pay to lend some material and moral support to their cause, could do so. Those two things have to be kept separate, I think.

The Chair: Thank you, sir.

Mr Offer: I have a question to Professor Panitch. I note that you're with the political science department at York University, and as that was the university I graduated from, and my major, I will gingerly put this question forward.

You spoke of the right of the individual to organize and the right of individuals to associate, and I think there isn't anyone who would disagree with those very basic and fundamental rights. I certainly would not for a moment. I'm wondering if you might share with me how you juxtapose the rights of individuals to organize and to associate with the rights of, in many cases, those same individuals to continue their operation in the event of a strike.

How does one juxtapose the right to associate with the right to organize, which is clear, which is there, while at the same time not reflecting the same right of an individual, in carrying on a business, to attempt as best he or she is able to continue that operation? Of course, we're talking specifically of replacement workers. Isn't that, in essence,

taking away the right of an individual to continue carrying on a business?

1900

Dr Panitch: To continue carrying on a business in the context of a strike, you mean?

Mr Offer: That's correct.

Dr Panitch: Yes. Here, in a sense, you have right against right. This is the question of balance that Justice Rand was raising. You're speaking of this in terms of the property right and you speak of it as though an employee, regardless of the blood and sweat and length of time that goes into a particular workplace, does not have a right to that employment.

What is being captured here, it seems to me, is the extent to which collective bargaining is about attempting to secure agreements, without the threat of losing your job permanently being an element in employer power. What tends to be forgotten is the fact that a strike is costly not only to employers but also to employees. Income is not being received; families are being supported; the dignity of work is missing for that period. There's a sacrifice on both sides. This appears to me the argument that would be made.

Mr Offer: Mr Chair, I know Mr McGuinty has a question. Forgive me, but when we can establish the right to associate, we can establish the right to organize and we can establish the right to strike, why can we not also continue the right of an individual, in many cases the same individual, to continue his operation without impinging on those other rights? Because they won't. That's just a point that I have made, and Mr McGuinty—

Dr Swartz: The point here is about balance. At one point in time the employer stood up and insisted: "It's my property and I have the right to hire whomever I choose. It's my property. I'll do with it what I want." The thrust of Rand's ruling was that the balance needed to be adjusted. All we're arguing, acknowledging that it is a question of right against right, is that the balance is wrong today, given changing circumstances, that the old legislation is outmoded and much needs to be done to redress that balance.

Mr Dalton McGuinty (Ottawa South): I couldn't help but think, as I was listening to your very interesting arguments, that the people who've come to see me in my constituency office, people right on the street, are very concerned about Bill 40, and they're concerned particularly because, from their perspective, it's not addressing the very real and pressing concerns they're facing.

They're worried about a job. Nobody ever comes to see me and says, "Get me a union job." They say, "Get me a job." They're worried about funding for our social programs. They're worried about our training and educational programs and how we're going to compete in a global economy. I'm just wondering how you respond to that very real concern. On the basis of what they have heard and read, they have developed a very real concern about the impact Bill 40 will have on our economy.

Dr Panitch: Let me say a number of things about that. There are obviously people who represent different con-

stituents. I would be amazed that an 18-year-old working at a franchise of some international hamburger joint who was harassed by a manager would not find it useful to have a union to defend her in that circumstance. I wouldn't be surprised that there are people for whom unions are of no relevance. But to say that this legislation, with the protection it affords in terms of association, is of no relevance to most Ontarians is patently absurd.

Second, the claim that jobs are lost by virtue of unionization is as old as our society. If you go back to 1872 and read the debates, you will find that the same kind of scare-mongering existed in that period. There is no necessary correlation.

Finally, I would urge you, in terms of the wellbeing of your constituents, to go see a documentary film, which won the Academy Award last year, called *An American Tragedy*. It's about the Hormel strike in a meat-packing plant in Minnesota in the mid-1980s. You will see a community and its politicians devastated by the fact that unemployed workers were brought in from proximate towns and cities in Minnesota. They replaced the jobs of everyone who lived in that town, and those people were left with having to abandon their homes and move. I don't know whether your constituents fall into that particular social grouping; I'd be surprised if none of them did.

The Chair: Professor Panitch from York University and Professor Swartz from Carleton, the committee thanks you very much for your contribution to the process. We appreciate your taking the time to come and speak with us. Transcripts of your participation here, by way of Hansard, are available to you and anybody else who cares to ask for them, as well as transcripts, by way of Hansard, of any other portion. Both of you, thank you kindly.

Dr Panitch: I wish the committee good luck.

ALUMINUM, BRICK AND GLASS WORKERS INTERNATIONAL UNION

The Chair: Please come forward and tell us who you are and what your capacity or your position is with the Aluminum, Brick and Glass Workers.

Mr William Steep: International representative with the Aluminum, Brick and Glass Workers, and I've been involved in organizing—

The Chair: You're going to have to sit down so the mike can pick you up, sir.

Mr Decker will distribute your material. As I'm sure you've realized, some of the exchanges and questions and that type of dialogue are very important to the committee. If you could keep your submission concise and leave time for that type of exchange, we would all appreciate it.

Mr Steep: I'll try to do that.

The Chair: Your name is William E. Steep?

Mr Steep: Yes.

On behalf of the Aluminum, Brick and Glass Workers International Union, we are pleased to be able to make this presentation and written submission to the resources development committee.

I'm here today to respond to Bill 40 and the government's proposed amendments to the Labour Relations Act.

This act and proposed amendments are most important to our members and to our union. Our daily experience in representing working people provides us with a particular insight as to a few of the key proposals Bill 40 speaks to.

As a representative for the Aluminum, Brick and Glass Workers International Union, I will try to give the members of the committee our view as to what we support in a few of the amendments, why we support it, and where in our opinion the proposals don't go far enough.

Given the extent of the amendments, I have only addressed a few of them. I have provided the committee with our union's written brief. Our intention, in this verbal presentation, is to limit ourselves to some of the key issues and our concerns about them.

The purpose clause: We are pleased that Bill 40 includes a purpose clause and that the objectives are set out. It is our belief that the language could be made more clear and stronger if the act recognized that effective trade union representation is necessary to bring equity between employees and employers. The new purpose clause is an improvement over the current act's preamble, but we feel there is still room for greater improvement.

Organizing and certification: This section represents the government's response to the substantial hurdles faced by employees when they attempt to obtain trade union representation.

Protection of employees from unfair labour practices during an organizing campaign: The proposed amendment, section 92.2, will allow unions to request an expedited hearing where it files an unfair labour practice complaint under section 91 of the act, alleging that the employee was disciplined, terminated or "otherwise penalized" during "organizing activities." Where a union requests an expedited hearing under this section, the hearing must commence within 15 days of the request and must sit on consecutive days, Monday to Thursday, until the hearing is complete.

Thereafter, the board must render its decision, oral or written, within 48 hours of the hearing's completion—subsections 92.2(3) and (4). This is a step forward and its significance rests in its ability to deter employers from committing unfair labour practices during the course of an organizing campaign. We can only hope the provision is strong enough to deter anti-union employers from deliberately discharging pro-union employees as a means of thwarting a union's organizing drive. I will comment more on this a little bit later.

1910

Membership fee elimination: The \$1 fee will no longer have to be paid by an employee in order to become a member for purposes of certification. While this may make it marginally easier for unions to convince workers to become trade union members, it's main effect will be to make it easier to establish union membership before the board. We support this proposal as it eliminates one of the objections an employer might use to delay or frustrate a certification application. Cards are not too complicated, but invariably there are always questions about whether the dollar was actually paid or whether it was lent by somebody else. We feel that's a step forward.

Petitions: The amendments, subsections 8(4) to (6), place a key limitation on evidence that a board member may consider in certification applications. The board will not consider evidence if such evidence "is filed or presented after the certification application date." The main effect of this proposal will be to prevent the board from considering petitions from employees who claim they do not want to be represented by a union where such petitions are filed after the union's application for certification date.

Restricting the role of anti-union petitions and certification applications is a welcome and major step forward. We therefore ask the government to take the necessary further step and completely eliminate petitions.

It is on this issue of anti-union petitions that I've had the most trouble and experience. I'm going to relate to the committee a story of one organizing drive I was involved with in 1986.

On May 29 and 30, 1986, I signed up 21 of 36 employees at a company in Brantford—it shows you who it is in the thing, but I didn't mention it here—and filed for certification on May 30. I took the cards down to the board myself and turned them in. Terminal date was set for June 10, 1986, with the hearing set for Friday, June 20, 1986.

An anti-union petition was presented at the hearing on June 20. It had two people who had signed union cards on this petition, which put the union short of the 55% needed for automatic certification. I did have two more union cards, but our secretary at the time failed to send them in by registered mail and therefore I couldn't count them. This action delayed certification and another date of July 4 was set for continuation of the hearing for certification.

On June 27, 1986, this company laid off four union supporters and kept junior employees. I filed a section 89 complaint. On June 30, the company put in a punch clock, which was never used before, in violation of section 79 of the act in that time frame. The hearings for these complaints were set for October 10 and 17, 1986. On November 6, 1986, our union was finally granted certification. By this time, four more union supporters were laid off out of seniority. They eliminated the afternoon shift and they all went to days.

The section 89 hearings were not held until March 10, 1987. Negotiations were dragged out by the company to go over the one-year period and at that point some employees filed for decertification. The vote was ordered for April 21, 1988, and our union was decertified.

I believe it is important to note that the anti-union petition was found to be sponsored by the company. In fact it was the night shift supervisor who went around to the people's houses and got them to sign it. But the fact is that they could stall the hearings and use delaying tactics. Eight union supporters lost their jobs. When they got the second vote to decertify our union—they were no longer employees—they in fact got their way by using the law to their advantage. This use of anti-union petitions to delay hearings should not be allowed and I hope the committee will take this into consideration.

Improving collective bargaining and reducing industrial conflict: This whole section is of key importance to us.

Use of scabs: This surely is the most controversial section of the proposed amendments. The use of scabs and possible prohibitions against this practice has been the subject of consideration and debate since the introduction of anti-scab legislation in Quebec.

Now the government's proposals move significantly in the direction of the Quebec legislation. Sections 73.1 and 73.2 constitute far-reaching restrictions on the employer's ability to have bargaining unit work performed during a strike. Such restrictions will only apply during a lawful strike or lockout. This must be authorized by a strike vote in which at least 60% of those voting authorize the strike under subsection 73.1(2).

The reason for the need of this section is obvious. It would put an end to violence because of the use of scabs. How many more workers must be hurt or killed on the picket line? We've had some experience right here in Ontario where people have been run over by—call them replacement workers, if you will, who've driven into the plant while a strike was being conducted.

Employee benefits: Section 81.1 requires an employer to continue paying employment benefits, other than pension benefits, when a strike or lockout commences, provided the union tenders payments sufficient to continue the employee's entitlement to benefits. The employer is prohibited from denying or threatening to deny such continued benefit coverage. This benefit amendment parallels that of other jurisdictions such as Alberta, Newfoundland and Manitoba, as well as becoming the norm in most Ontario labour disputes.

I can tell you that we've had problems in various places where I've negotiated collective agreements where there has been a strike and people have gone out. We've had to go out and scrounge to get at least life insurance for people because management wouldn't pay the benefits because we were on strike.

In conclusion, the government of Ontario is to be commended for both initiating a full consultative process enabling all views to be heard and for proposing significant amendments on labour law reform. Bill 40 represents a far-reaching and progressive package of provisions which will help working people in Ontario maintain and advance their standard of living and quality of life. At the same time, we have tried to point out areas where the government's proposals are in our view incomplete, such as the remaining space for petitions.

Our union would like to take this opportunity to thank the standing committee on resources development for taking the time to hear our views. We trust that our concerns will receive serious consideration in the final writing of this legislation, which is so very important to our members and the people of Ontario as a whole. Thank you very much.

The Chair: Thank you, sir. Four minutes per caucus. Mr Ward, and I should tell you Mr Huget wants to get involved too.

Mr Ward: Mr Steep, I'd like to thank you for taking the time to give us this excellent presentation. I think it's an accepted fact that very few people in Ontario will dispute that over the last 20-odd years the workplace and

workforce have changed significantly: more women entering the workforce and the part-time changing nature of the economy going into the service sector.

Is it your opinion—and I know your background; you've got great experience in the labour movement—that the efforts of this labour reform, although you have some concerns that it doesn't go far enough, will foster a growing environment of cooperation and a development of trust, not only between labour and business but government as well? Do you feel we are moving in the right direction with this labour reform and will it eliminate the aspect that if a group of employees or working people wish to be organized, they have greater opportunity to do so?

Mr Steep: Yes, I really believe that the whole package is a step forward. One of the things is that people are really afraid. I'll tell you, I'm working on an organizing campaign right now and 90% of the people who won't sign union cards—it's not because they don't want to belong to unions; they're afraid that management in some way is going to retaliate against them.

I think the union movement as a whole has taken a step forward, where we now encourage participation of the union in making the workplace better. It's always been my belief that we can't just leave it up to management any more. We have to become involved ourselves and use the brains of all the workers and not just the managers. I think that this legislation moves towards encouraging unionism and will in fact develop that spirit of cooperation as we move ahead and try to do better. They are our jobs that we're trying to protect.

1920

Mr Huget: I want to refer to the replacement worker issue. I notice you make a very brief comment about it in your presentation. I guess what I would like from you is whether or not the companies you've worked with use replacement workers, and if they do, what effect has that had on the nature and the length of strikes you may have witnessed. I'd like your opinions on that.

Mr Steep: I have to feel very blessed in that our industry, the glass industry—and we make beer bottles, pop bottles, ketchup bottles, whatever the case may be—you can't just bring somebody in off the street who can learn to operate it in a week. It can't be done. So we've been fortunate.

Where they have brought trucks into the plant to take material out, which isn't really replacement workers but taking stuff out, I can tell you that it causes a great deal of conflict and hardship. I can speak about my own plant when I was local president in Brantford. Unfortunately the plant is now closed, but it decided it was going to bring in raw materials. They charged a truck in through the picket line and people had to almost—well, I didn't—scatter up the snowbanks to get out of the way of the truck.

The Chair: Mr Offer, four minutes.

Mr Offer: Thank you, Mr Steep, for your presentation.

On page 3, you spoke about the issue of the membership fee, which is now \$1, being eliminated under these proposals. You state, "This may make it marginally easier

for unions to convince workers to become trade union members." I'm wondering if you can share with the committee why the elimination of the \$1 membership fee will make it easier to convince people to become members of a union.

Mr Steep: First of all, I would have to say this: The fact that they pay \$1 or not is not so much a big issue any more, except that what invariably happens is that management usually calls into question whether the finances were paid properly or the cards were signed properly, were signed in the right place. It's one more issue that management brings up. In organizing we strictly tell our people they're doing this on the inside; they cannot lend somebody the \$1 or lend it to somebody else to lend the \$1.

Sometimes we feel that management has put people in there just to see if they can get a card and not have to pay \$1. That happened to me in organizing Windsor Tile back in 1984. In fact I said: "No, we don't do that. You've got to give me the \$1 or you can borrow it from somebody else, but it can't be anybody involved in the organizing." It's one more tool, I think, that management uses to try to stifle or delay the union organization drive.

Mr Offer: Just as a follow-up. I'll be very brief and maybe we'll have some time to ask further questions. If that's your position with respect to the \$1, that it's used by the employers, do you feel the legislation should be changed so that there is an obligation in legislation to inform employees as to what it means in terms of their rights in joining a union? Right now this is absent in the proposals. There is no obligation to inform an employee as to the impact of signing a membership card. Do you believe the legislation should be changed in order to fully inform employees as to what it is when they sign a membership union card?

Mr Steep: I'm working on organizing a drive right now, and I've handed out petitions and addressed issues in the plant that people have talked to me about. They've sent out six different letters turned in with the employee's paycheque on everything about how union dues is something that is going to be taken away from you rather than added to your payroll. The letters have laid out how to go about starting a petition. Management still has those rights and still takes full advantage of them. Like I said, I've been in this place six months and they've sent out seven letters to their employees and it's all about how bad unions are.

Mrs Witmer: I do want to thank you for your presentation and for sharing with us some of the problems you've had in unionizing. You indicate you're pleased the anti-scab proposal is going to do away with workers being hurt or killed on the picket line. I'd like to know how many workers have been killed in Ontario because of this legislation and when that happened.

Mr Steep: Unfortunately I don't have all those statistics in front of me, but I'm sure you'll hear them before these hearings are concluded. Right offhand I can think of three: one in St Thomas and two here in Toronto. Steelworkers were involved in two of them and I'm not sure who the other one was, but it was a case where a truck came in with replacement workers and this guy was stand-

ing in front of the gate and the bus charged right in and ran him over. That was right here in Toronto about three or four years ago.

Mrs Witmer: And he was killed?

Mr Steep: Yes.

Mrs Witmer: The other thing you mentioned is the fact that it's very difficult to unionize, and you recounted some of the problems you've had in unionizing. I wonder, in all fairness, if we were really going to make sure the legislation was balanced and that employees were truly going to be well informed, if you would support a proposal—and I think I'm following up on Mr Offer—whereby union organizers would have an opportunity to share with 100% of all prospective employees, not just the ones they feel would be supportive of the union, what it means to be a union member and what are the consequences of going on strike, what are the dues and what is the labour history of the union.

Would you also support that employers be given that same opportunity and then allowing employees, through a secret ballot vote, to freely express whether or not they wish to join a union so that the process would be free of coercion from either union or employer? Would you support that process to fully inform employees?

Mr Steep: I'd actually love to be able to address all the employees in any one plant along with management at the same time and tell them the benefits of unionization versus the company's version of what the union will take away from them. We try to tell people when we organize them. I make a very strict rule. We never lie to employees. We always give them our constitution that outlines the salaries of our president and treasurer, how much dues they have to pay and what percentage stays with the local union. We try to give them the straight goods.

I probably should have brought my organizing file. I could have shown our letters we put out when we go to a place we're trying to organize. We're doing handbilling. We try to give that information to employees so they know exactly what it is. My experience has been the worst the union can do is make the company live up to the laws that are already in place. In a good percentage of cases companies are not following the laws that already exist for health and safety and pay equity.

Mrs Witmer: Would you support the employee having the right then to a secret ballot vote to choose whether or not he or she wants to join a union after he or she has had an opportunity to be fully informed of what it means?

Mr Steep: I've been involved in votes before for one reason or another. I think the idea of having a free vote every time in fact delays the time frame in which something can be done and allows management to do more things, send more letters, make more contacts, use the rumour mill to try to influence people through foremen or lead hands or whatever to get them to change their minds. Clearly if you have 55%, as the legislation says, I don't think you need to have a vote. In the experience from the United States, where they can delay a vote for up to a year, you'd be lucky in some cases if any of those people you signed up are left a year later.

If the vote could be done right away and management wasn't allowed to do anything or maybe even the union wasn't allowed to do anything, I might not have a problem with that. But clearly we're working from the dark in trying to organize up to 55% of the employees. In some cases we can't even find out how many hourly rated employees there are in the plant.

Mrs Witmer: I guess that's one of the changes that could be made; that list could be made available to you. I'm just saying we need to open up the process and not make it so secretive, and make sure that it's free of any coercion or harassment from any side.

Mr Steep: I'd be glad of that, if management could keep its hands out of it, for sure.

The Chair: Thank you, Mr Steep. We appreciate your coming here representing the Aluminum, Brick and Glass Workers International Union. You've made a valuable contribution and we're grateful to you. Please feel free to spend time here along with the other visitors.

Mr Steep: Thank you very much, Mr Chairman.

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ONTARIO HOTEL AND MOTEL ASSOCIATION

The Chair: We have the Ontario Hotel and Motel Association, if the people representing that group would come forward and have a seat. I would tell others that there's coffee and soft drinks at the side. They're here for you to make yourselves comfortable and at home.

We've got 30 minutes. Please try to keep your presentation compressed. We've got your written material, which will become an exhibit. All the members have that, and most of them have read most of it already. Please try to save the second half of the half-hour for questions and dialogue.

Ms Diane Stefaniak: Good evening. My name is Diane Stefaniak and I am the executive director of the Ontario Hotel and Motel Association. To my left is Mr George Schmalz, who runs the Blue Moon Hotel in Petersburg, Ontario. He is the president of our association. He will be here if you have any questions after my presentation.

I would like to thank you for giving me this opportunity to speak on behalf of the members of the Ontario Hotel and Motel Association on this very important issue. We are a hospitality trade association of over 1200 members in the accommodation, food and beverage service throughout the province of Ontario, representing over 60,000 bedrooms and well over 15,000 employees. Approximately 90% of our members are small- to medium-sized operators who offer products and services to the tourist.

The tourism industry has been hit hard by this recession, as have all businesses. The increases in minimum wage, taxes, the employee health tax and unemployment insurance have hit our industry the hardest. This has resulted in many closures and staff layoffs, which have meant the livelihood not only of the owners of these closed businesses, but their employees. As you know, the hospitality industry is extremely labour-intensive and is the largest employer of minorities, women and the unskilled

worker. We feel that many of the changes, if enforced, would mean further closures, as our industry could not take on another burden and survive.

We acknowledge that changes are needed in the labour act, but feel that the changes presented are not practical and will force many businesses to close because it will be too expensive to operate in Ontario. We agree that there are instances where the recommendations might be needed, but just as there are bad employers, there are also bad employees.

One reason there's resistance by the industry is from personal experience: demands for high wages when there is not much room for profit margins; refusal to complete a job because it is quitting time or break time or, even worse, "It's not my job." It's a little difficult to tell your guests they cannot enter a room for another half-hour because there is a wire on the floor which cannot be moved except by a hotel employee and that employee is on a break. Yes, this is a true story. At the same time, we recognize that the employer must treat the employee fairly and with respect.

Unlike a manufacturing plant, there is no inventory in hotels or restaurants. If the room is not sold that day or a meal not served, that revenue is lost for ever. In many instances, recovery is not possible and the doors are closed. These establishments quite often are family-owned and -run. When the doors close, it generally means the life savings of a family are wiped out, so it isn't just the employees who lose out.

In consulting with my colleagues in the meeting and convention industry, they have reassured me that when choosing a destination for a convention, serious attention is given to see, if the property has a union, when the contract comes up for renewal and past history of service satisfaction. Can you imagine what would happen if the nine hotels in Toronto which are all represented by the same union went on strike at the same time? The cancellations would devastate the economy of this city, which would have rippling effects on other businesses, right to the government and loss of tax revenue.

Not only does tourism employ a lot of people, but it creates jobs through the money generated by the tourists. A study conducted by the International Association of Convention and Visitor Bureaus estimates that the average daily spending of a convention or trade show delegate is \$143, or \$585 per stay. This amount is distributed to the hotel, restaurants, entertainment, retail stores, agriculture and transportation. To get a more accurate picture of the revenue generated, multiply this amount by seven. If tourism wasn't so valuable, why do so many countries compete for major events such as the Olympics and World Fair? But we cannot invite people to our province and then set up the roadblocks such as high costs, taxes or no services due to labour disputes.

I would like to highlight some of the more critical areas of concern for our members.

The extension of powers to the Ontario Labour Relations Board is of great concern, especially since these will be appointments and there will be no process for public confirmation. How can this board be impartial under these conditions? To suggest that the collective agreements

would not be looked at but rather the employee and employer relationship—that alone is questionable. This fundamentally shifts the body from a non-partisan body to a pro-labour body.

Adding the preamble into the purpose clause changes the focus and clearly guides the board to the interests of unions and not necessarily the employee. This would make it difficult for the employer to take hard bargaining positions or to recognize the necessity of concession bargaining. This bill seems to encourage the board to ignore economic realities.

To allow organizers and employees on third-party premises or property to organize infringes on the rights of the public. What is considered to be the employee's entrance or exit from their employment? What about the case of food courts in malls? This would disrupt many others who are not involved and frighten the public away because they do not want confrontation. How many people walk around an area to avoid picketers? We recognize that it is not the intention of this clause to cost jobs of third-party employers, but without the ability of these employers to state their case as to how and why picketing will affect their business, you will be encouraging further job losses.

We support the rights of individual workers to freely decide if they want to join the union, but we feel that the employee must have equal opportunity to hear both sides, then judge for himself or herself and have the freedom to vote without pressure. I believe it should be through secret ballot.

At all times these presentations should be made in such a manner that it would not encourage or create conflict between management and workers. Eliminating admission of petitions or any other means for an employee to change his or her mind after the union has filed its application for certification takes away that right of the employee. In my mind, this is similar to the cooling-off period presently allowed with contracts and major purchases. It is important that when petitioning employees, they are also fully aware of what additional costs are to be incurred when joining a union. We recommend that union fees be clearly indicated on the membership card. More information should be given in written form by both the employer and the employee.

It is important to review each case on its own merit and not approach it with a broad-brush stroke. If the true spirit of organization is for the rights of the employees—all employees—then it must be researched to see if the desire of organization is beneficial for the majority or just a few. Will the employees be better off financially and emotionally? Will they still be proud of their job and ability? Will they still be productive and will the establishment still be able to be competitive and provide employment at the same level if they were organized?

We believe that the workers should have the right to belong to a union, but they equally have the right not to join. The freedom of choice should also extend to the employees if they wish to continue working or to strike. The choice should be the individual's.

To allow the consolidation of bargaining units in the hospitality industry would be devastating as it would dis-

courage investors who are interested in the franchising of restaurants and/or hotels. This would also create pressure on employees who do not want to strike at their place of operation but are being forced to by another unit that happens to have more employees.

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The hospitality industry serves the public and tourists. By not being allowed to bring in replacement workers to service these guests, the hotel or restaurant will suffer, and possibly close, but a great spinoff will occur: Revenue will be lost for taxi drivers, non-striking surrounding attractions, farmers, government taxes and so on. A family-run business must also be able to continue operating. They should be allowed to have their families and friends assist them. If a company has to close down during a strike, it is a very real possibility that it will not be able to reopen after this strike and the employees will not have jobs to return to.

If you want to restrict management from bringing in staff from other locations to work during a strike, then you must limit the picketers to only the striking employees from that particular site.

By uniting the full-time with part-time workers, the rights of the part-time workers are being undermined. Their interests are generally different, and quite often they choose to be part-time and do not want to be organized in the same group as the full-time, if at all.

In summary, I say we must work on a win-win situation. Employers in the hospitality industry know that the employee is their most important asset and that they need to work together to make things work. The employee must be content and the employer must create an atmosphere in the workplace to encourage career satisfaction.

Today is not the time to impose these recommendations. We agree that some changes are needed, but further consideration should be given. We believe each case should be judged on its own merits. If something is not working now, review that particular case to see if there is a better solution. We agree that labour and management must work together, but this agreement must take place first, before any further legislation is placed on our industry.

We believe there should be better access of information for both the employees and small employers in assisting them to deal with labour issues and the labour act. The majority of employers in our industry do not have, nor can they afford, a human resource manager who specializes on labour issues.

It is our belief that any legislation must be for the good of all the people, labour and business. On paper recommendations might appear to be favourable, but in practice they could have an opposite effect. The changes should be carefully studied, with case scenarios. The examples must not be slanted in favour of either labour or business, but evenly split, with large and small companies segmented by area and type of establishment. Only then can you really have an idea of the impact these recommendations might have.

The proposed ease of organizing a union will be a deterrent to investors and continue the exodus of many

businesses out of Ontario. With technology today, many central reservation systems and offices are already operating outside our province, and in many cases outside of Canada. Reservations for hotel rooms in Ontario are taken in the United States. The mail order business is growing with orders being processed elsewhere for delivery in Ontario.

Other job losses have occurred with chain operations moving their payroll, marketing and even buying departments out of the province. The buying departments have already put together a list of front-line suppliers to purchase their products if a strike happens. This shows a real job loss, not just in the restaurant or hotel, but down the line to the truckers, the food processors and, most important, Ontario's agriculture. If we continue on this road of roadblocks for the employer, we will soon have a block of buildings with nothing but machinery that connects Ontario to the rest of the world.

We also question why unions that have had no experience in the service industry are so interested in helping the service industry. Are we the scapegoats because they lost members through so many job losses in manufacturing because companies were closing and moving? The unions that presently service the hospitality industry have been building a good working relationship with us. They understand our needs and our industry. We suggest that when unions are petitioning to organize an industry they have some experience in that field.

This present legislation has made changes that will not only treat employers unfairly, but will encourage further closings and cross-border exodus of businesses. There must be a solution whereby employees and employers can be treated equally, and the recognition that the rights of the employee are important but so are the rights of the employer. It doesn't serve anyone well if there are job losses which will result in lost revenue, thus lowering the spending power that ultimately will create jobs once again.

The Chair: Thank you, Ms Stefaniak. Five minutes per caucus.

Mr Offer: Before we get into some of the more substantive aspects, because you are such a very important association which really is found in every community in the province, can you share with the committee any sense you have as to the degree of unionization that now exists in the Ontario Hotel and Motel Association?

Ms Stefaniak: I think it's in the minority. I'm afraid I don't have exact statistics. There are some hotel properties up in northern Ontario and Dryden that have some organized unions on their property. I'm just gathering statistics now as to how many of them are unionized, but I don't have an exact count.

Mr Offer: Okay. What I'm hearing in your presentation, in the area of organization and whether or not to join the union, is the concern of your association not to take away that right of the individual, but rather to make certain the individual is fully informed before he makes his choice. I'm wondering if that's a proper characterization of your position.

Ms Stefaniak: I think that's very accurate. That's exactly what we're saying. It has to be freedom of choice, and they have to have full information before they can make that decision.

Mr Offer: If I can address the issue of the replacement worker—because right now, though we don't know the percentage, there is certainly some incidence of unionization in your association—is your concern with respect to the impact that will have on any establishment? Is there any suggestion that you are making on this issue as it affects your industry?

Ms Stefaniak: If I could address it as an example, why we are concerned about the replacement worker is that it is vital to keep the operation going. Because our industry is service, that indicates labour, and it's labour intensive. As soon as you take away the regular staff, if you have guests in your hotel—and I repeat that word is "guests," and tourists, and they are invited—what type of perception or what image are you giving them if you cannot give them at least partial service? By taking away the right to have replacement workers, you would have to actually close down and there would be no way of recovering, maintaining service or even having a business open.

Mr Offer: I'll be brief in this question. I have heard in the convention trade, certainly in an urban area, that whatever the group coming in is, if it's a major group, questions are always asked as to whether there are collective agreements, when they expire, and if they expire, whether a guarantee of service can still be given to their members. In many cases, I'm sure in some of the larger conventions, that might entail service to 30,000, 40,000 or 50,000 people. I'm wondering, first, if you can affirm that, and second, what your feeling would be if that assurance of service can't be given.

Ms Stefaniak: I can categorically agree with you that this is one of the things. When people are looking for destinations to hold their conventions—and it really doesn't matter what size—there is the issue of whether the property they're going to is organized and when its contract definitely comes up. If there is a choice of two or three cities, and maybe the city they choose is Toronto, if there is a fear that the property will go on strike or there is any labour dispute, they will not go there. They will go somewhere else. In Canada, as it is, we're competing. We have enough competition with prices, and as I say, that's just one more thing to chase the person away, if he feels he's going to come to unfriendly territory.

Mr Offer: I have no further questions, Mr Chair.

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Mrs Witmer: Thank you very much for your presentation, Ms Stefaniak, and I'm pleased to see you, Mr Schmalz. I guess we're neighbours.

I think Mr Offer has referred to one of the major concerns about this legislation, and that is the anticipation that it will create job loss in the province, and that it already has. I guess I'd like you to expand on the last page. You mention here that already central reservation systems and offices have moved outside of the province and that people are moving their payroll, their marketing and their buying

departments as well. I had heard this rumour several months ago. You're saying this is definitely happening. How fast is this type of move taking place where we're actually losing jobs in this province?

Ms Stefaniak: I think that with the economy people are looking at the most efficient ways. You're going to find places like even Pizza Pizza having a centralized phone system. I'm not saying they would move down. I believe Best Western has a central reservation system in the United States. Granted, that's an American company. When they're looking at other offices to hold it because there's too much for one location, Ontario is not on their list for consideration, even though maybe a lot of business is done here. Again, these are just things that you hear about as you go along, more and more of these offices being opened up outside the province.

Mrs Witmer: Then that definitely does confirm the rumour I heard. This is happening, and I understand there are many other companies that are looking to do the same thing if Bill 40 is approved.

It appears that Bill 40 is going to have a unique impact on your industry because of the need to service your clients at all hours of the day on an ongoing basis. Do you have any recommendations for amendments this government should be looking at as far as your particular industry is concerned? Is there any proposal you particularly find offensive that needs to be dramatically altered or removed?

Ms Stefaniak: As I stated, I firmly believe that there is a time and a place for everything. I cannot say that unions should be entirely wiped out in the hospitality industry, because I don't think that is the answer; I think they're needed in some areas. But I think consideration has to be made as to the type of industry, the ramifications if an establishment is organized, the fact that the majority of people in the hospitality industry are small or medium-sized businesses where they just simply cannot afford all these roadblocks that are set up.

I guess my main thing is that when they're looking at any labour legislation, the tourism industry be carefully considered: that it is not a large manufacturing plant; consideration that we do not store inventory; that the job losses are a real thing. If a restaurant or a hotel has to close down because of a labour dispute, that could be permanent closure.

Mrs Witmer: I appreciate the information you've given us and I hope the government would certainly look at making some serious amendments in regard to your particular industry.

Mr Turnbull: Ms Stefaniak, can you comment on the potential of having a first-contract arbitration imposed upon an establishment in your industry? I know your profits are very slim, if they exist at all at the moment. What would be the impact of an arbitration agreement being forced upon you, typically, today?

Ms Stefaniak: I think the economic impact would really depend on the size of the establishment or the number of employees. As I say, many of them are family operated businesses. They do not have management staff that have human resources. I think when it comes to anything like

that, just being able to cope with it, to understand it, is one issue. I don't know if they'd be prepared for that first step.

Mr Turnbull: You understand that this would not take into consideration the capacity of the establishment to pay higher wages. It would be mandated upon you.

Ms Stefaniak: That's right.

Mr Turnbull: Do you feel that would lead to bankruptcies? I'm not trying to coax you to say this, I just—

Ms Stefaniak: No, I understand. Unfortunately, I also am a layman. I'm not an expert on the Labour Relations Act or anything. I know that many of my members right now are on the brink of bankruptcy. Throughout the province, there are a lot of hotels, large- and medium-sized properties, that are in receivership. It's just adding one more nail. As you've said, the fact that there would be no negotiation as far as the size of wages is concerned, any consideration of what that particular operation can afford, really would be devastating.

The Chair: Mr Fletcher, please save time for Mr Klopp.

Mr Fletcher: I will try to.

Thank you for your presentation. I have a comment on what was said. Some of the large companies in Ontario have reinvested in Ontario. We look at Ford, Chrysler, General Motors, Glaxo; they're putting money into Ontario. They know about these laws that are coming through, about this legislation, and they do have confidence.

Getting back to the tourism industry, I have two questions. First, do you feel that with this legislation, if it passes, bang, you're going to have a union in every hotel and motel throughout the province?

Ms Stefaniak: No. I know realistically that won't happen, nor do the unions intend for that to happen.

Mr Fletcher: Stealing another page from the Conservatives, right now you have the opportunity and you will have the opportunity to present your side to your employees about unionism. Would you allow union representatives to come in and talk to your employees and tell them about the benefits of joining a union, if it were legislated that way?

Ms Stefaniak: Providing that the employer would have equal rights and equal time.

Mr Fletcher: You have that.

Ms Stefaniak: They don't have it to the same degree. Again, I have been involved, many years ago, and I don't think there is that same even playing field, as I said in my presentation.

Mr Fletcher: What if you both did it at the same time? How's that?

Ms Stefaniak: If we both did these presentations at the same time and gave the employees the chance to digest what was being said without any extra influence and the opportunity to vote on a secret ballot where they would not feel intimidated by both the employer or the employee, then I think that would be a fairer way of doing it.

Mr Klopp: He stole my question. To you, sir, Blue Moon: I've been there many times in my few years around the world. You've been an owner for a long time?

Mr George Schmalz: That's why I have the grey hair.

Mr Klopp: You have really good food and good staff. I guess that ties in. I don't know if it's unionized or not. I never look at that. I go by the people. If they have smiles on their faces, they're happy employees, and that's reflected in the tip they get from me.

Mr Schmalz: That's another issue.

Mr Klopp: I'm a farmer and you mentioned agriculture. I've been hearing rumours too out there in the system, I guess, that unfortunately a lot of companies—the information can be true or not—actually import a lot of their processed food to hotels. I have a few friends—I'd like to think they're friends—in fairly big hotels in this province, just connections. I ask where they get their food from. When I look, I have a hard time saying that it's probably imported, that it isn't Canadian beef, that it isn't even western beef. They say, "Oh gee, it says, 'Packaged in Canada.'" Would you have an idea how much Ontario agricultural products are used in the industry? I'd really like the information.

Mr Schmalz: I believe that in my establishment, it's 100%. Sometimes we don't know the manufacturers—through agencies and so forth down the line—but we do profess to try to use local foods and things of that nature.

Mr Klopp: But we have a lot of big hotels. I wouldn't be surprised. I would bet that as a family run operation, that's a plus. I wish we all had more smaller hotels rather than bigger hotels. I'd like to know, if you can get that information for me, is it 80% of all the companies or whatever? It would help me along for a lot of other issues.

Ms Stefaniak: I will make a note to see if I can find out the sources.

The Chair: Thank you, Mr Klopp, Diane Stefaniak, the executive director of the Ontario Hotel and Motel Association, and George Schmalz, the president and also the operator of the Blue Moon Hotel in Petersburg, which has won accolades from at least one member of this committee. What is the address of the Blue Moon Hotel?

Mr Schmalz: Between Kitchener and Stratford.

The Chair: The Blue Moon Hotel between Kitchener and Stratford. Paul Klopp frequents it often and is very pleased. I want to thank both of you for appearing here on behalf of your association. You obviously represent a large constituency of business people, small and large, in the province. We appreciate your taking the time to come out and help us in this process. We're extremely grateful. Please feel free to stay for the rest of the evening.

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ONTARIO COALITION AGAINST POVERTY

The Chair: The Ontario Coalition Against Poverty, please seat yourselves at a mike and give us your names and your titles, if any. We've got 30 minutes. Try to keep your presentation down to the first 15, max, so we can have some dialogue, which is inevitably important.

Mr John Clarke: My name's John Clarke. I'm the provincial organizer of the organization. Making a few comments after me will be Merle Terlesky, who is with our Metro committee.

I should begin by explaining that the Ontario Coalition Against Poverty is a coalition of anti-poverty groupings throughout the province. We're an organization, at least to the extent that we've been in the public eye, that has been associated with issues concerning welfare rights.

That being so, I think it's extremely important that I stress that in our estimation the poor of this province have a very vital stake in the question of labour law reform. Members of the committee will be painfully aware of the fact that enormous numbers of jobs have been lost during the period of economic recession. But we also must point to the experience of the recovery of the mid-1980s, when enormous numbers of people who went back to work found themselves going back not to their former jobs but into the low-wage ghetto.

In the situation we're in today, where recovery is on the agenda and people start to go back to work, when there have been so many plant closures, we can only imagine that the process is going to be worse this time around than last time. That's something we need to bear in mind, because the plight of the working poor becomes an extremely desperate phenomenon in Ontario, even more desperate than it has been to date.

It is impossible to overstress the extreme vulnerability of the working poor in today's situation: inadequate minimum wage, recourse only to the Employment Standards Act. We have a situation where a whole layer of extremely exploited workers exists in our society today, a disproportionate number of whom, of course, are to be found as youth, women and members of minority groups.

It seems to us, therefore, absolutely vital that this segment of workers have access to the benefits of trade union membership and trade union organization. That's one of the chief ways in which people are going to be able to work to improve their wages and working conditions. Of course, low-paid workers are concentrated precisely in those sectors of the economy that historically have a dismal record with regard to rates of unionization. We're aware of the fact that within manufacturing some 44% of workers are organized, but within the retail sector it's down to 14.9%. I was at a committee meeting of Metro council today where a representative of the Bay was able to testify that within his operation it's down to 8%. Therefore I would like to put on record here that our coalition believes the right to unionize has to be a key part of an anti-poverty strategy for Ontario.

Before offering an evaluation of Bill 40, I'd like to place it in a certain context, because I think it's extremely important that legislators carry out their deliberations with regard to the fact that what they decide is going to go out and have to be actually practised in the real world. If you are talking about providing safeguards to people to ensure that they can enjoy the benefits of union organization in a climate that is free of fear and intimidation, you have to consider the realities of the workforce in the 1990s. You have to ask yourself if a small potential bargaining unit

made up of mainly immigrant women, for example, is able to proceed without fear and intimidation. You have to consider the situation of the enormous numbers of people returning into employment from the welfare system and you have to ask, "Are those people going to feel free of intimidation and ready to go about participating in union-organizing drives?"

That being so, having placed it in that context, I think I'd like to say that this bill we're dealing with here seems to us timid in some ways, but none the less an enormously important piece of legislation that needs to be supported if it needs to be strengthened. I'd like to give a few examples of that.

We note that it offers some measures to help domestics and agricultural workers. That's very important, but in a situation where lone domestics are not to be given the opportunity to organize, in a situation where agricultural workers are not to be given the right to strike, we think that weakens the thing considerably.

It's certainly necessary, in our opinion, in the whole question of the right to organize, to take a very bold approach to the situation. It's important that a review, as we understand it, of the situation of home workers and domestics is under way, but we would support the proposition advanced by the Ontario Federation of Labour that it's necessary to carry out a major study of the whole question of broad-based bargaining.

We are not back at the end of the war in the postwar boom period. The potential bargaining unit today is often very small. We understand that in 1985, 85% of workplaces consisted of less than 10 workers. We can only imagine that this continues to get worse. The whole question of broad-based bargaining is therefore a very important one and needs to be looked at seriously.

Around questions of organizing and certification, the comments that were just made about the real world apply here, I think, with great effect. We certainly support the notion of expedited hearings before the board in a situation where workers believe themselves to have been victimized for organizing activities. However, the Ministry of Labour document that was circulated last year calls for a seven-day delay in the process. We now notice that Bill 40 talks in terms of 15 days. In a climate of fear and intimidation, in a climate where people are reluctant to proceed, we think that having this kind of situation hang over people for as long as 15 days would be a grave mistake and that it's necessary to return to the seven-day provision.

We are glad to see increased access to third-party property, but we see no reason why union organizers should not have access to non-productive areas in workplaces like cafeterias and parking lots. We certainly would support the position that a number of unions have advanced, that union organizers be given access to lists of employees. I think that would be extremely important. In today's situation, where just about everybody has everybody's name on file, I really think questions of privacy are not ones that can be taken as seriously as the need to give union organizers and potential union members an opportunity to have access to the benefits of union organization.

Certainly, on the question of petitions, we are extremely glad to see some moves in the direction of anti-union petitions being removed, but we think they should be banned outright. In our opinion, they are a thoroughly discredited mechanism that is so open to abuse that their utter and immediate destruction is certainly well warranted.

I would like to take up briefly the question of scabs. That's one that has attracted great public attention around the whole debate on this legislation, but it is a vital question for the anti-poverty movement. We have always been opposed to pitting unemployed and employed workers against each other. We consider that to be something that is vile. We consider it to be an exploitation of the desperation and misery of the unemployed, and very often more than just simple economic pressure is used in that regard.

When I was with the London Union of Unemployed Workers during the postal strike in 1987, I well remember that the welfare department was caught out telling people that if they failed to take strikebreaking positions at Canada Post, they were in jeopardy of losing their welfare cheques. When that kind of pressure is applied to people, we think it's completely and utterly unacceptable, and indeed we think the anti-scab provisions need to be strengthened.

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We note that a 60% strike vote is necessary for the protections to kick in. We don't think that's necessary. We certainly believe that non-bargaining unit members being able to work at the strike location is unacceptable. While in some heavy manufacturing industries the provision around the ability of employers to move work to new locations may not have a rampant effect, in something like the garment trade it could threaten to make a complete mockery out of the intent of an anti-scab provision. It's something which certainly should be reconsidered.

By way of conclusion, I'd simply point out that we're operating today in a climate where social legislation generally is under enormous attack. The watchword, the buzzword, of the level playing field gets raised everywhere you go. The altar of competitiveness is something that social programs generally and progressive legislation seem to be being sacrificed on on an enormous scale.

In that situation it's hardly surprising that Bill 40 has become something of a lightning rod for corporate criticism. We see absolute hysteria in this regard. Just the other day, I was driving down the Danforth and noticed a billboard with a caricature of Marx, Lenin and Bob Rae and a slogan about Bill 40. When that kind of hysteria emerges, we're clearly dealing with something completely ridiculous.

Based on that, I think it's necessary to deliver a special word to the government members here and that is simply that the corporate lobby is never going to be reconciled to labour law reform. I think there's a need to recognize that and recognize it very frankly. The truth is that if you water down this legislation, you will hurt the workers and the poor people of Ontario, but you certainly won't stop the criticisms that are going to continue to be thrown at you. Based on that, my advice to you would simply be to let them howl. Go ahead and introduce the legislation. It's absolutely right. If strengthened in the way it needs to be,

it will provide a vital handhold to people. Go ahead and do the thing. Thank you.

Mr Merle Terlesky: My brief will only take about five minutes.

It is the opinion of the Metro council of the Ontario Coalition Against Poverty that the issue in front of this government today, that of labour reform, is of fundamental importance for the enhancement of workers' rights in Ontario. We believe that the result of passing this bill should be a radical shift of power away from the domination of the employer to an equal relationship with that of the employees.

I recall riding on the subway yesterday and seeing a billboard promoting one of Toronto's many temporary work agencies. It asked the question, "Is your workforce as flexible as the economy?" I believe today that is how the business lobby would like to keep its workforce—in a state of constant limbo, workers never really sure of their job security or rights in the workplace. For too long business has had a rather secure position in this province of dictating to its workers how they should be treated and putting incredible stumbling blocks in the way of union organizing at the workplace.

While Bill 40 in our opinion represents a long overdue change to the Labour Relations Act, as welcome as it is, it does not go far enough. Non-unionized workers in the hotel-restaurant industry, in which I have worked over a number of years, are in desperate need of legislation to protect their rights, particularly in the area of the right to organize without intimidation and with the assurance that workers' concerns will be addressed in an expedient way. Speeding up the process by which certification can be finalized is vital if labour law is to have any teeth at all.

The previous discussion paper proposed a maximum of seven days to address wrongful dismissal of an employee during an organizing drive. It has now been changed to 15. Why? Already the system is geared far too heavily in favour of the employer, with a history of judges hearing arguments in the wee hours of the morning for an application for an injunction, as happened with Canada Post. Surely this government can give workers a guarantee that their rights will be dealt with in as quick a fashion.

All morning today I sat in a Metro boardroom listening to the business lobby tell Metro's management committee that Bill 40 will hurt investor confidence, kill jobs and hurt the economy. Not once did I hear any specifics of how this would come about, just alarm bells sounding off in hopes that the public will react with angry letters to government ministers. Their strategy, I believe, is to create an unnecessary atmosphere of fear among the residents of Ontario that somehow labour reform is not in the interests of the workers of this province. The majority of workers however, I believe, know full well what these proposed changes will mean to them and that they will help their situation.

I want to relate to you a quick story of a worker I worked with at the Il Fornello restaurant located on Bloor Street, quite a popular pizza place. He was an Iranian middle-aged man who worked from 9 in the morning until 11 at night, got one lunch break, one dinner break and didn't

get overtime pay. I offered to go to the Ontario Labour Relations Board on his behalf. He was completely terrified. He had only arrived in Canada a year earlier and was very fearful he would lose his job. What, may I ask, is the business community doing for a man like that? Where are the billboards defending his rights?

I want to reiterate today what I have told the Minister of Labour on other occasions, that the well-financed business lobby is not interested in amendments to Bill 40 in hopes of finding an even balance; on the contrary, they are working as hard as they can to see the complete destruction of this piece of legislation. It is sad to see this government, which was elected by people who wished to see these reforms go forward, now trying to dance to the tune of these forces.

Does any responsible member of this government believe for a moment that by watering down even more of what Bill 40 represents, it will guarantee the support of business in the next election? No, I think you all realize—and I can assure you—that when the next election rolls around, big business will turn up its machine to do a royal mowing job over the changes this government is trying to initiate, and will try to ensure the election of a government far more subservient to its interests, such as the Tories or the Liberals, or even the Reform Party.

With so many workers in Ontario now being threatened with succumbing to a level playing field philosophy being put forward by employers and the Conservative and Republican governments re the proposed North American free trade agreement, many workers' last hopes now rest with this government's promise to act on labour reform.

To act is exactly what the Metro council of OCAP is asking you to do. We're asking you not to waver on anti-scab legislation. Strikes are not meant as a tool to give employers the option to ignore their workers, which is exactly what they will do if their businesses can continue to function in the strike situation, whether that be at the plant site or moving it a few miles away. Clearly, we can see that had this type of legislation been in place earlier, the Toronto Star strike would most likely not have lasted as long, because scabs brought in from the US to drive trucks could not have been used to deliver the papers, and other replacement workers keeping things rolling in the plant would not have been possible.

We urge you not to continue listening, or paying much attention at least, to the lies and deception of big business continuing to say that Bill 40 will kill investor confidence and result in huge job losses. What I believe they are really trying to say is that they would rather see Ontario as a state like Alabama, where businesses can feel comfortable investing with the promise of minimal levels of unionization and having an unfettered right for employers to treat their employees as they wish.

I have more but I'm going to wrap up, to provide some time for questions, with this word to you, members of the government: It's been the history of governments worldwide that whenever they tried to bring in legislation that is going to better the plight of workers in their country or in their province, they are hit head on with opposition from business. It's all at different levels. We can recall the

government of Salvador Allende in Chile, which with simple land reforms that he tried to bring in, was met with a violent coup d'état. I don't think that's going to happen in Ontario, but the fact remains that big business does not see a role for labour legislation reforms. They are not interested in reform in Bill 40. They're interested in killing it. The damage will be to us, not to them.

The Chair: Thank you, sir; Mrs Witmer.

Mrs Witmer: We have no questions, thank you.

Ms Murdock: I just want to ask two questions. One is in terms of the equal relationship that both of you mentioned, how, in terms of the anti-poverty group you represent, you would even see that. Are most of your members or the people you deal with predominantly working in a part-time organization? Are they predominantly women? What is the breakdown of your group and what would its representation be like? It sort of goes into my second question, which is that I'd like you to explain how, in your particular organization, broad-based bargaining might work.

Mr Clarke: In terms of the membership structure of our organization, we're a coalition of local organizations. The composition of those organizations would vary somewhat, according to the particular group. We have, for example, unions of unemployed workers and single parents' associations, but in general I think the composition of the member groups of OCAP would reflect precisely the social physiognomy, if you like, of the poor throughout the province, which is to say that part-time workers would be disproportionately represented, women would be disproportionately represented, certainly visible minorities and, increasingly, youth; I think that in the period we're now going through, poverty affecting young people is becoming an absolutely rampant problem.

In terms of broad-based bargaining, we reach the limits of my own expertise. I don't think I could speak to the question of broad-based bargaining nearly as well as many in the trade union movement, particularly garment workers and others, would be able to do, but I think the point I sought to get across, my lack of a blueprint notwithstanding, is the essential point that today bargaining according to the old pattern, when it was modelled on the structure of large-scale enterprises forming a unit, has become to a large extent outmoded and it is necessary to develop beyond that.

Around the issue, for example, of domestics who may be employed as individuals, who may work as individuals in an individual workplace situation, the notion of a hiring hall has actually been advanced. So I think what it's necessary to do is to begin with a realization of the fact that fundamental change is necessary and then to grapple with the problem in some detail.

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Ms Murdock: Since there is a disproportionate number of the groups we intend for this to predominantly impact upon, I presume you've been hearing examples of how the existing legislation is impacting upon those members or those people, and can you give us a couple of examples?

Mr Clarke: I think we're simply dealing with a situation where for enormous numbers of people, the opportunity to unionize is simply not there under the present arrangement. That's true for a number of reasons, but in large measure it's there because people are enormously intimidated.

We're just arguably coming out of a situation of mass unemployment and I think it's something of a commonplace that a little bit of unemployment is not a bad thing in terms of disciplining the workforce from an employer's point of view. I think that is a real reality.

We're dealing with a situation where people in some cases may have been through an extensive period of having to go on to welfare. They then find themselves working for the first time in perhaps a year. They realize what's going to happen to them if they go back to the local welfare office and tell them they got fired from their job. It's not a very encouraging prospect.

I think the climate of fear out there is extreme. If you are going to be able to carry out meaningful and successful union organizing drives, that level of fear and intimidation has to be brought down and I think some of these proposals go some of the way to addressing that.

Mr Ward: I agree with your perception, and I think everyone does, that the workplace and workforce have changed dramatically since the 1970s and that labour reform is long overdue in this province.

I can relate to my own community. In the beginning of the so-called boom years of the 1980s in Brantford, the hardworking people at Massey-Ferguson and White Farm were simply unemployed because of the bankruptcies of those two large farm implement manufacturers. I also agree that the workers from those two corporations who were fortunate enough to find new jobs were at a drastically reduced wage rate. To this day, some have not worked at all.

I'd like to hear your views on the fact that it has been since the mid-1970s, I guess, where significant changes have occurred to the Labour Relations Act in this province. Governments should not allow that aspect to happen, because economies change and workforces change on an ongoing basis. Do you feel that reviews should be ongoing so the act is kept up to date to what is occurring in the province now and in the future?

Mr Clarke: I can only concur with the concept that the review should be ongoing. I think it needs to be stressed that what we're talking about here in this particular situation is really to be addressed—I think this bill could be presented as a measure of partial redress.

We're talking about giving people something of a handhold in a situation where the ranks of the working poor have grown enormously. We're not talking about handing some enormous advantage to working people. It seems to us, because of the whole change in the economy, not just because of the recession but because of the whole restructuring process that is going on, that people are being forced into the low-wage sector in enormous numbers.

Giving people the opportunity to unionize is of course not going to be a panacea for those people. Somebody who

was working at Massey-Ferguson who is now working for Wendy's hamburger chain, should he or she be able to find union membership a reality tomorrow, is not going to be back to the situation he or she was in when working at Massey-Ferguson. What we are talking about is giving people some opportunity to make some progress and some opportunity not to be crushed by the present situation.

Mr Cleary: Thank you, gentlemen, for your presentation. I guess this would be to you, John. In your presentation you showed dissatisfaction with the agriculture part of the bill, and I take it from comments like that you must be very familiar with the agricultural operations of this province. What I would like from you is to hear your recommendations on how agriculture should be handled in this Bill 40.

Mr Clarke: You mercilessly expose my lack of expertise in agriculture and I can only throw myself at your mercy and concede that point. None the less, we are aware of the fact that the bill is proposing to give the right of union organization. However, the right to strike is not there. It seems to us that in many sectors of agriculture—I have some familiarity with workers working in the tobacco fields in the Tillsonburg area—workers do not find themselves, should we say, at the pinnacle with regard to the situation they're in, the wages and the working conditions they have, and our sympathy lies entirely with those workers. We believe the benefits of union organization would be very important for them.

While we're ready to listen to evidence to the contrary, we always believe that workers who have the power to withdraw their labour are workers who are strengthened by that and we would therefore, on that basis, suggest that agriculture workers too should have the right to strike. We think to compare them to firefighters or other workers who are deemed essential is, in our opinion, a mistake.

Mr Cleary: That might be all right in tobacco, but in other parts of agriculture it just wouldn't work. I would hope there wouldn't be too many changes in the bill to do with agriculture because agriculture is the second biggest employer here in Ontario, and when you get out into the dairy and other industries, you run into lots of problems.

Mr Clarke: We would trust there are spokespersons for the agricultural business who would be able to make their case. We sincerely hope, however, that the voice of agricultural workers too would be heard. We would ourselves, lack of expertise in this specific area notwithstanding, certainly say our sympathies lie with the struggle of agricultural workers to improve their situation.

Mr Cleary: The other thing is that municipalities are having a difficult time now with social services and social assistance and most of them have a great burden on their employees. I'd just like your comments on that. Say the union decided to strike where social services cheques were being dispersed to the residents. How would you handle that?

Mr Clarke: We certainly, wherever possible, like to see a situation where people can continue to receive social assistance cheques. In the situation of the postal strike, for example, postal workers were able to offer very concrete

measures to ensure that the cheques were still processed. I've generally found that workers who are contemplating an industrial action are not interested and don't wish to harm people who are going to receive government cheques. I imagine that that would be the same situation in the hypothetical case you're talking about.

Mr Terlesky: I would just add to that actually. I know that during the last Canada Post strike, I happened to be on welfare, and it was the offer of the union to distribute those cheques when necessary and it was the decision of the company not to allow them to. So it wasn't the workers who made the welfare people stand in line; it was the company.

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The Chair: Mr Cleary, do you want to let Mr McGuinty ask a question or did you want to ask another?

Mr Cleary: Go ahead. I have another one, but that's okay.

Mr McGuinty: Gentlemen, thank you for your presentation. I don't think there's any doubt that when you spoke to us this evening, you spoke to us in all sincerity, honesty and heartfelt belief. However, I am concerned about your urging—I guess it was directed to the government members—that they dismiss outright submissions made by big business, I think you called it: the corporate sector. I just wanted to put that on the record. I think it's unfair.

For instance, would you have us dismiss all that Ms Stefaniak, the woman who occupied your seat just prior to your presentation, said? I think that would be unfair, and I'm going to assume that you did not intend your remarks to be taken to that extreme. I think that we sitting on the left hand of the Chairman have heard from a number of groups which have legitimate concerns which ought to be advanced. To urge the government members to dismiss those outright is inappropriate. I don't think you intended that to be taken to the extreme, but of course I stand to be corrected.

Mr Clarke: Certainly I think you've effectively thrashed out our partisanship, and we make no apologies for that. But at the same time, I think that were we to be construed as advocating that the opinions of big business should not be heard in this forum, we would be in any case be irrelevant. It seems to us that if there are any criticisms to be made of the government side in this matter, one is its inordinate readiness to extend consultation in this matter. There's been a great deal of consultation. But I think we did come here with a very clear intention of driving home the point that business is certainly not going to be reconciled; that its arguments around competitiveness are something that, in the final analysis, government has to be prepared to stand up to.

We're hearing in some cases language that borders on irrationality with regard to the risk to Ontario's competitiveness that this very modest piece of legislation would entail. I made the point today at Metro management committee that there isn't one piece of social legislation worth anything that was ever implemented without business saying that competitiveness would be destroyed and the

country would go to the dogs. That's true of medicare; it's true of everything going right back to child labour laws. That's the way it's always been, and I just think that sometimes it's necessary for governments to have some resolve and to proceed, even in the face of doom and gloom.

The Chair: Thank you, sir. John Clarke, the provincial organizer, and Merle Terlesky, leader of the Metro committee of the Ontario Coalition Against Poverty. We thank you for taking the time to come here. We appreciate your views, and you've made a valuable contribution to the process.

Mr Clarke: Thank you. We actually have something in writing, if somebody would like to take this.

The Chair: The clerk will take that from you, and that will become an exhibit. Of course, you're welcome to stay for the rest of the evening.

CHRISTIAN LABOUR ASSOCIATION OF CANADA

The Chair: The next participant is the Christian Labour Association of Canada. Would you please come up and seat yourselves in front of a microphone. Tell us your names and your positions, if you have titles of that sort.

Mr Ed Grootenboer: My name is Ed Grootenboer. I'm the executive director of the Christian Labour Association of Canada. Next to me, on my left—although after Mr McGuinty's remark, I don't know what connotation I should give to the word "left" any more. Is this the left or is that the left?

Mr Ward: You never know. Everybody is in the middle.

Mr Grootenboer: There we go.

The Chair: It's peculiar for Mr McGuinty to identify himself as being to my left, but far be it for me to pass judgement.

Mr Turnbull: Can I just point out, as a point of order, I feel far left.

The Chair: There goes a hard-won reputation on my part.

Mr Grootenboer: Next to me is Mr Ray Pennings. He is our promotion and publicity director.

We have a prepared submission that I think is being distributed to you. Unfortunately we were told that we should not submit a prepared submission ahead of time, so we're bringing it to you now. I don't know if we were operating on right or wrongful assumptions in doing that. In any event, I intend to take you through most of our submission in the time that is allotted to us and I hope there will be time for discussion and questions from all sides.

First of all, we want to thank you for the opportunity to make this presentation. The Christian Labour Association of Canada is a trade union that operates in all sectors of industry, including construction. We represent some 13,000 members in Canada. About half of those work in Ontario.

In all its verbal and written presentations on labour law reform, CLAC has attempted to give expression to its main objectives as a trade union, namely, that progressive labour relations must include practices that stress the dignity and

responsibility of workers. Workers are not pawns in an adversarial struggle; they must be given their place in the labour relations process. We must respect the differences of opinion among workers and among trade unions. That's the issue of plurality, which we'll come back to later. We would like to create a cooperative as opposed to an adversarial labour relations environment within the places we represent. Last, we would like to maintain the integrity of the trade union as a voluntary organization which workers choose to join freely. In other words, we are opposed to practices of forced membership in groups where a trade union has bargaining rights, and in fact we do not practise that.

While CLAC derives these objectives from a Christian view of life and from biblical principles about human activity and relationships, they are and can be shared with people of all walks of life. Our experience has been that these objectives make a positive difference in the workplaces where we represent employees and hold bargaining rights.

We have stressed in our previous submissions to the ministry, of which there have been two, as we noted in our introduction, a number of points.

1. Trade unions, we feel, are missing the boat when they claim that employer opposition and interference is the major, if not the only, reason for the low proportion of trade union membership among workers. Surely employers are not powerful enough to persuade two thirds of the province's workers not to belong to trade unions. We believe there are other reasons. While we agree that employer interference in the matter of union membership must be checked when and wherever it occurs, unions must also be prepared to examine their own practices. Workers, in our experience, do not want to belong to unions that are dictatorial, undemocratic or unresponsive to their needs.

2. Labour law should strike a careful balance between collective and individual rights. For example, in our 40 years of experience in labour relations and collective bargaining, it has proven to be unnecessary to force trade union membership on workers in the bargaining units we represent. For similar reasons, we have serious reservations about any measures in the Labour Relations Act amendments which needlessly restrict or ignore the freedom of workers on the matter of union membership.

3. Labour law cannot guarantee good results and desirable behaviour. The purpose of law is to influence and direct people towards just relationships. Attempting to do more than that creates all kinds of distortions and contradictions which only serve to diminish the freedoms and responsibilities of individuals and the institutions to which they may or may not belong.

4. It follows that, to be useful, cooperative labour relations structures must include a willingness on the part of management to respect and recognize the responsibilities of employees and their trade union and on the part of unions to give responsible leadership considering the needs of the whole enterprise. Certainly an adversarial mentality has no place in cooperative labour relations. But the outrageous claims and assertions by both business and

labour interests in the past year are not promising indicators for a new era of cooperative labour relations, no matter what the law may prescribe.

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5. Trade unions must respect and deal with each other as equals, even though they may have very different viewpoints. Plurality is a vital hallmark of a tolerant and diversified society. It is totally unacceptable that organizations such as the AFL-CIO building trades unions should be permitted to act as if they are entitled to a monopoly in the construction industry and that they are allowed to use exclusionary practices against non-AFL-CIO unions in that industry, such as our trade union and its members. Such intolerance is undemocratic and contrary to the spirit and the intent of law on every other level of society. We would not stand for a minute in any other area of our society the kind of practice these unions are allowed in the construction industry. We'll make some definite proposals on that towards the end of our submission.

On the specific discussions of the Labour Relations Act amendments, we have numbered our interventions in three ways. I hope it's less confusing rather than more confusing.

The first reference number, section 8, is Bill 40. The second is the LRA designation, which in the first instance happens to be the same, section 8. The third designation is the page of Bill 40.

Under section 8 of Bill 40, while we understand the desire and recognize the need to minimize opportunities for employer interference in the organizing and certification process, we do not agree with the proposed remedies. Our disagreement stems from our conviction that employees' rights to make a considered decision on the matter of union membership and representation should not be abrogated or compromised by efforts to neutralize employer interference.

We believe the whole certification process would become much more open, aboveboard and understandable for both employees and employers if the legislation were to require a secret ballot vote on all applications for certification within a short period of time. In British Columbia and Alberta such mandatory representation votes within 10 days of the date of applications have worked well. All the employees can exercise their right to choose freely, and the employer is still enjoined from interfering with that right. We urge the committee and the government to adopt this democratic way to decide union representation and bargaining rights. This suggestion will come up again under other areas of our submission.

Under section 12 we have two points, which are more to deal with wording than anything else. In subsections 12(2) and 12(3) of Bill 40, a distinction arises between the use of the words "employees' workplace" in describing access for organizing and the word "operations" in describing the area in which picketing is permitted. As they stand, these subsections will be subject to two different interpretations, and we do not believe that was the intent.

The intent of this section was to reach employees working in operations located in malls and in other public properties, and we agree with that. However, the use of the phrase "employees' workplace" would allow the disruptive

effect of organizing within a public access operation, such as a hospital, a freestanding store, a retirement home, a chronic care facility or any other freestanding operation to which the public normally has access, which is the qualifier. We would suggest that in subsection (2) the word "operations" be used instead of the words "employees' workplace," lest we get into difficulties. There can be a difference, as we outline in paragraphs that I haven't read to you.

The second issue under section 12 of Bill 40 is another wording thing. We believe the word "respecting" should be replaced with the word "restricting" in subsection 11.1(6). The 11.1 is the LRA designation, so it would be subsection (6) of section 12, I believe. I think that is the proper word that should be there. It could be a typo; I'm not sure.

Under subsection 19(3) of Bill 40, as it stands, the effort to promote serious collective bargaining and to provide for an expeditious resolution of first-agreement interest disputes is not maximized by the provisions of subsection (3). The effectiveness of the final offer selection process hinges on it being mandatory; thus, subsection (3.1) is virtually ineffective in that it only "forces" serious bargaining where parties voluntarily agree to abide by a final offer selection process. Of course, when parties voluntarily agree to do that, they should be able to bargain in any event. It is in cases where they remain in dispute that they should be forced to use the final offer selection process, so we believe it should be mandatory.

Section 22 of Bill 40: In promoting regular labour-management communications, the provisions of the bill in this section go about as far as they can go. Again, we stress that legislation can only direct and enable, but it cannot produce or guarantee results.

In this connection, we cannot help but observe that much of the current public rhetoric about cooperative labour relations is shallow and not backed up with action on the part of most trade unions or employers. The extremely polarized debate on the current OLRA reforms and the amendments indicates the persistent presence of a class struggle mentality among people. I think that persists in people on the right as well as on the left. The adversary system in labour relations, I think, is an exhibition of that class struggle mentality and I think it's rotten to the core. It's bad for labour relations and it least of all serves the employees it's supposed to serve, because they get caught between the two sides fighting it out.

Under subsections 23(2) and 24(1), we have a notation that we believe the last sentence of subsection (4.1), and similarly under subsection 24(1), should be deleted. The reason we say that is because we would like not to draw the attention of an employer to the fact that he can resist the appointment of a settlement officer. We think the settlement officer procedure has been very, very helpful in labour relations, but in many instances, employers are not aware they can refuse an appointment, so why wake up sleeping dogs? Whether they allow the officer to come in willingly or unwillingly, it's results we're interested in, so why flag it?

We would prefer to leave the language as it was in the current act, "the minister may appoint," and the minister always does whenever the parties agree. Usually a phone call from an officer to an employer settles the issue as far as the employer is concerned because the law is now speaking to him or her.

Under section 32 of Bill 40, we ask the government to amend this legislation at paragraph (2)1 so that the required strike vote will be taken, or confirmed if one was taken earlier, at a much later date. We suggest there be a vote within two weeks of the strike date with full disclosure to the employees of all the issues that have been settled and that remain in dispute.

The reason we stress this is that we feel the employee should have a much greater voice as to whether his services are going to be withdrawn from the employer or not. They should be involved more in the process of whether a settlement is reached or not. It should not be left to some union officials and some paid committee members.

Again, we ought to stress that democracy should rule also within the affairs of unions and here is one way to encourage that, that employees, prior to the final decision being made—and we suggest within two weeks—be informed of all the outstanding issues and then make an informed decision, not a decision at the time when proposals are made: "Everyone in favour of a strike if we don't get all this? Yea." It's useless and it's not an informed decision.

Under section 32, we would like to point out that we have no problem with the no-replacement-worker rule. We have experienced, in the few strikes we've had, that it's a very tenuous situation when replacement workers come in, and we do not like to see it. We think it's unfair, and it's correct to outlaw them. However, we would like to put a caveat on it, that the employer must refuse an offer to settle the dispute in binding arbitration. Why do we do this? It puts the onus on the employer and that's where it should be.

If the employer has any valid customer requirements that he feels will be jeopardized, that his operation is jeopardized by a strike, and if he is so right in his cause of standing up for the issues, that he's not agreeing, then let an arbitrator or an impartial third party decide that. Meanwhile, the business can continue to operate. We believe such a measure will prevent unions and employers from playing games with each other, with outrageous demands and obstructive bargaining, games in which the employers are often helpless pawns.

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Section 38—that's the old section 91—the jurisdictional dispute section of the act, in our view has no place in the Labour Relations Act. We would like to see subsection 6(3) and section 93—it is now—of the act removed. We think the craft system of organizing workers is archaic in any industry, not only in the construction industry. We believe it's useless to tie up the board's time and public money in the disputes between unions. Let them settle their own disputes in Washington or wherever.

Subsections 43(1) through (4): We submit that in the matter of applications for certification, membership evi-

dence filed must be in the form of properly executed membership application cards only. Currently, the board accepts a union statement that an employee has been paying dues. We've used them as well, but we always have the employee sign it or certify it so that he knows his membership is being used for another application for certification in a place other than where he was working at the time he took out membership.

We think that's only fair, particularly in situations where an employee was forced to join a union in order to work through the closed shop or union shop provisions and then that membership is used without his knowledge to entertain an application or to submit an application for certification with another employer before the labour relations board. Coupled with the removal of the initiation fee payment, it should be no problem to get an employee to sign a new application card or have him sign his membership certificate so he knows the membership is being used for another application for certification. Again, we want to stress employee involvement.

Subsection 43(5), the removal of the minimum initiation fee payment of \$1, is a curious development in our view. Those who say it has become a meaningless amount advocate that it be removed rather than increased to, say, \$2 or \$5. I think under federal law it's \$5. At the same time, many labour unions, especially in the construction industry, routinely charge initiation fees that amount to hundreds of dollars. The question arises, if the dollar payment is only symbolic, why is there such pressure to eliminate this payment? We believe that the payment of an initiation fee, even if it's only a token amount, serves as a meaningful expression of commitment on the part of the employee. In this connection, we refer again to the removal of the petitions, that it also serves to take away employee involvement as a meaningful choice to join or not to join a trade union.

If the legislation would call for a mandatory vote on all applications, we would not be worried at all. In that connection, when it comes to advocating the mandatory vote on all applications for certification, our perspective would be, what are trade unions afraid of, the ballot box of democracy? It's a great way to put certification out of the covert into the aboveboard, out in the open. That's what happened in British Columbia and Alberta, and it's very well accepted and it's worked very well.

In section 57 of Bill 40, we see no reason why the construction industry, in this case, has to have a special status. We operate in the construction industry as well; 55% is just as good there as it is anywhere else. Why? I have heard no cogent reasons why it should be 50%. It appeared all of a sudden out of the blue in the bill and I was rather surprised to read it. I think it should be the same as in any other unit.

LRA subsection 68(2) and LRA section 72: I referred earlier to trade union plurality. We have informed the minister on several occasions of the overt and covert practices by the building trades council unions, the OFL-affiliated unions, against CLAC and its members. We have documented those complaints in an inventory. The current act provides very little protection against these onerous practices.

We have engaged in lengthy and costly litigation before the board to seek enforcement of the right of our members to work, and it has had mixed and inconclusive results. This sad state of affairs should not be allowed to continue in a pluralistic society that promotes tolerance and freedom for all. Hence, we propose an addition to section 68 and a new section 72 which recognize those principles. It is to prevent trade unions from interfering with each other's bargaining rights and the rights of employees to work without regard to which union they choose to belong to.

Section 47 of the Labour Relations Act is something we would like to see added to Bill 40—well, it won't be added to Bill 40 any more, but to any amendments to the legislation—and that concerns the closed or union shop. We believe it's time to no longer permit the practice of compulsory union membership as a condition of employment.

We firmly believe that forced union membership in a voluntary association—which is what a trade union by definition is—is a blatant violation of the basic rights and freedoms of employees. Compulsory union membership is unnecessary if the provision for mandatory checkoff remains. All we're talking about is the forced joining of an organization that an employee may not want to join. We're not quibbling with the mandatory checkoff of union dues; we practise it ourselves.

Coerced union membership through union shop or closed-shop provisions goes to the heart of the credibility of trade unions as free and democratic organizations. We cannot help but observe the low level of employee intelligence presumed by those who blame the fact that two-thirds of workers in the province have not joined a union on employer interference. Most employees are not simply helpless, ignorant bystanders in the matter of union representation. People who believe this adhere to an ideology that has more to do with Marxist notions of a perpetual class struggle than with a free and democratic society, and we should not confuse the two issues.

The truth is that many workers choose not to belong to a union because they perceive such a union to be restrictive, undemocratic and often compromising or acting against their personal interests and beliefs. Unions would do well to set their own house in order so as to be attractive to unorganized workers. One positive step in that direction would be to restore unions as voluntary organizations and prohibit the practice of compulsory union membership.

Thank you for your time. We believe our suggestions can be helpful. I hope they will be considered seriously.

The Chair: Thank you, sir. We have time for one question from each caucus.

Mr Ward: Shall we share?

Ms Murdock: No, you go ahead.

Mr Ward: When you look at the economic challenges that we're facing here in the province and in the country, I agree that the old ways no longer work, the adversarial approach. Do you agree that if we're to meet our challenges, head into the 21st century and maintain the quality of life that we enjoy for our children, we have to foster

cooperation and trust between labour, business and government all working together? Do you agree with that concept, and is that the direction we should be heading into?

Mr Grootenboer: Yes, as long as you keep in mind when you talk about labour and business and government working together that we don't get into a corporatist situation where you have one of each, that you will offer plurality. That is difficult to do, but it can be done. It's been done in other European countries and it can be done here too, if we are of a mind to do it, as long as we don't adopt the unitarian approach that we've tried to address in the construction industry under one of our proposals, that you allow for differences of opinion, that you allow for choice. I think that only enriches society, if you have different opinions, rather than just one stream of thought operating within society; also on the economic and business level.

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Mr Offer: Thank you for your presentation. As I listened to your presentation, indeed read along, it seems that it's premised on full disclosure and freedom of choice for those involved in the workplace. I am particularly interested in page 10 of your brief, where you speak about the issue surrounding a strike vote and your concern—I think it's a fair representation—that in many cases the strike vote is taken at such an early point in time that the percentage of those in favour of a strike may not be reflective of those in favour of a strike somewhere down the line.

One issue I want to ask about is not contained in here. As you know, in the proposals the strike vote is now additionally crucial in that if there is greater than 60%, the prohibition on replacement workers kicks in. One area that has not yet been touched upon is that the 60% is just 60% of those who voted; it isn't 60% of the actual individuals entitled to vote. Of course, we can think of a scenario where, in a unit of 100 people, if 10 people show up at the meeting and six people vote in favour, that would be the 60%. I wonder if you might be able to comment on whether you feel that this too is an issue which is to be addressed.

Mr Ray Pennings: You indicated the fact that our proposal was premised on the fact of full disclosure and everything else. That's true. What's even more so and what was foremost in our minds was trying to put on paper and present to the committee the source of practices which the Christian Labour Association of Canada has been trying to put into practice for 40 years, not simply because we wanted to put a proposal in front of you today that said, "Listen, this is how democracy works." These are the sorts of things we have currently been able to put in practice in roughly 300 collective agreements representing 13,000 workers, and yes, they work. They have flaws; they have warts and all the rest, but yes, these sorts of proposals can work.

When it comes to the strike vote, the proposal we put forward to you today is the exact proposal we practise at CLAC, that strikes are to be used. It's like a declaration of economic war. No one wants war. War is a last resort. The purpose of the collective bargaining process is to bring the

two sides together to an agreement through negotiations. When that fails, when there's an impasse and both sides feel they have just cause, then maybe it is time to declare war. Maybe there is such a thing as a just war. In that case, let's go to our members. Let's get from the members that mandate on the issues that are on the table. Then we're not talking about a bargaining stick behind the door. No, bargaining has failed. We're talking about a situation where there is an impasse.

In terms of your specific thing about the number of people who have been at the meeting, of course you always run into the logistical problem of never having 100% turnout. I think what is important is that the process used is accessible to all, that the meetings have been properly constituted and that everyone has fair notice and a fair opportunity to consider the issues. If that sort of process is followed, then I think you have the opportunity for a much juster relationship in a secret ballot.

Mrs Witmer: Thank you very much for your presentation. It was certainly well presented, and I would concur with many of the points you've made. I think you have made every attempt here to ensure that there is fairness and equality in the workplace and that both the employer and the employee are encouraged to work cooperatively together in the working environment.

One of the things I have tried to do is to introduce a private member's bill which would make it mandatory to hold a secret ballot vote for certification and for ratification of collective agreements and strikes. I have noticed that you certainly mentioned some of these areas. So far, the government's been reluctant to support that proposal. Could you suggest to us some reasons why the government should be looking favourably at the secret ballot vote to give all individuals the freedom of choice?

Mr Pennings: I think we of course travel very delicately when we enter into the issues of partisanship on this committee or on the whole thing. We don't want to venture into why the government might or might not. Obviously we have premised the very existence of a trade union as being a voluntary organization and that runs to the heart of the reasons we have said no to closed shop in our own practices and the way we have conducted all of our affairs. Certainly the argument usually raised is the fact that these sorts of things are needed to maintain union security in the workplace.

We have found, as I said, through 40 years of existence as a minority, independent trade union that has—and I attached a graph of our membership growth. We had 17% membership growth last year and that's continued this year; 10 consecutive years of membership growth. Why? Because I think workers in the places we have organized have recognized the way we have tried to operate and they have certainly found an attraction to that. As for further reasons against that, I'm afraid we haven't been able to

think of very many valid ones, obviously stated by our position here.

Mr Grootenboer: I think there are some good arguments to defend that. First of all, it's the democratic way. I can give you a wild example and this is a real example. Currently, an electrical contractor—I think I used it prior in our submission on the discussion paper—in London, Ontario, on a given Sunday had seven employees working. The majority, more than 55%, happened to be members of the International Brotherhood of Electrical Workers. They managed to find a post office open. They submitted their application. On the date of application they had more than 55%. Of a workforce of 70, four out of seven decided that issue. That is not democratic at all. That is playing games with numbers. I think if trade unions want to get their credibility back, they better start paying some attention to those things. I think it puts trade unions out in the open via the ballot box.

There are employees who are scared to talk to trade unions within the workplace. Why is it? Because it's supposed to be covert. If we put it out in the open like that with a secret ballot vote, I think some of that smeariness will disappear from it and employers will be able to accept it a lot better too. That would be my argument for saying, "Hey, let's put it out in the open, a secret ballot vote on every application for certification no matter how many cards you've signed, provided there is, of course, a minimum threshold."

The Chair: Thank you, Ed Grootenboer and Ray Pennings, both representing the Christian Labour Association of Canada. The committee thanks you sincerely for your input, for a thoughtful presentation. You've obviously captured the attention of all of the members of the committee. We appreciate it.

The committee's going to be sitting again tomorrow morning at 10 am. It's just a little bit after 9 pm now.

Mr Grootenboer: Mr Chairman, can we stay the rest of the evening too, like everybody else?

The Chair: Mr Grootenboer, it's Queen's Park, it's your building. You can stay all night. The committee's going to be resuming at 10 am tomorrow morning. The Ontario Federation of Labour is going to be here at 10, at 10:30 Mike Menicanin from the United Electrical, Radio and Machine Workers of Canada in Welland is going to be here, the Ontario Chamber of Commerce at 1:30. We're looking forward to hearing from those people tomorrow.

I want to thank the committee members for their cooperation this afternoon and this evening. I want to thank the staff for their skilful job and especially Hansard for its speedy preparation of this afternoon's transcript. Thank you. We are adjourned until 10 am tomorrow morning. That's Wednesday, August 5.

The committee adjourned at 2109.



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Wednesday 5 August 1992

Standing committee on resources development

Labour Relations and
Employment Statute Law
Amendment Act, 1992

Assemblée législative de l'Ontario

Deuxième session, 35^e législature

Journal des débats (Hansard)

Mercredi 5 août 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant des lois
en ce qui a trait aux relations
de travail et à l'emploi



Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 5 August 1992

The committee met at 1000 in room 151.

LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992

LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

ONTARIO FEDERATION OF LABOUR

The Chair (Mr Peter Kormos): It's 10 o'clock and we're scheduled to start, and so we will. The first presentation is by the Ontario Federation of Labour, if the people seated would please give us their names and their titles.

Mr Gordon Wilson: Thank you, Mr Chairperson. We have informed the clerk, but for the record, let me introduce the members of our delegation. With me are Ms Julie Davis, the secretary-treasurer of the federation; Mr Ken Signoretti, executive vice-president of the federation, and Mr Chris Schenk, who is the research director of the federation.

We have made a submission which I believe members of the committee now have. We would propose to read the introduction and file with the committee the rather comprehensive brief that we have developed to assist the committee members in making a determination about the matter before them. If I can, I'd like to begin.

The Chair: Yes, sir, please. We have half an hour. Please try to save at least 15 minutes for dialogue.

Mr Wilson: I'll try to move as quickly as I can.

The Ontario Federation of Labour is pleased to have the opportunity to present our views on Bill 40, the government's proposed amendments to the Ontario Labour Relations Act, to the members of the Ontario Legislature's standing committee on resources development.

The Ontario Federation of Labour is comprised of affiliate unions representing 800,000 members who are engaged in many and varied occupations and who live in virtually every community of our province. The federation has represented the interests of Ontario workers, both organized and unorganized, since 1957. Prior to the 1957 merger, our predecessor organizations represented the interests of workers in this province for almost 100 years.

We are not newcomers to the subject of workers' rights and the struggle to obtain those rights. On the subject at hand, we have made many submissions advocating reform since October 1959. We have advocated for not only the reforms contained in Bill 40, but for many others as well. Some have been acted upon by previous provincial governments.

Our credentials for addressing the issue of workers' rights are well established in our province. We believe that

the issue of Bill 40 is clearly an issue of workers' rights. In the simplest of terms, the proposed legislation outlines the manner in which workers will be treated in a modern economy and in the context of a democratic society.

In the course of these hearings, this committee will entertain submissions of indignant protest and hear expressions of outrage from some—and I underline "some"—members of the business community. These representations will argue that there has not been sufficient consultation on the subject of labour law reform. In our experience, as I mentioned earlier, of over a century of representing workers, we cannot recall another proposed legislative initiative which has been discussed as thoroughly as Bill 40. An exception, perhaps, is the national debate on the Canada-US free trade agreement.

The degree to which business has conducted its campaign in opposition to these amendments, within government and publicly, is unprecedented in Ontario. A slick and American-style Hill and Knowlton campaign of fearmongering and misinformation has been visited upon the citizens of Ontario. For what purpose? For the single purpose of protecting and advancing the vested interests of the business community.

Some business spokespersons have attempted to advance the theory that this legislation's sole purpose is to advance the interests of Ontario's unions. I respectfully remind this committee of what is obvious: Unions don't join unions; workers join unions. Workers who believe they are treated unfairly by their employer and believe they cannot as individuals obtain relief join with other workers to seek representation. This legislation stipulates that it must be a majority of workers who feel they require relief through representation prior to an alteration of the status quo. When a majority of workers feel relief is necessary, they must, in a democratic society, be granted the same right as employers to join together in their pursuit of their common interests.

We would ask those who oppose Bill 40 why they believe it is all right for individuals to combine their resources as shareholders to improve their mutual wellbeing and security, yet somehow it is not all right for workers who wish to exercise that same democratic right. Why is it that workers who combine the resources of union members to improve their mutual wellbeing and security are characterized as harming Ontario's future?

Why is it that employer organizations such as the Canadian Manufacturers' Association, the Canadian Federation of Independent Business, the Business Council on National Issues and a myriad of other trade and commercial employer organizations exist to advance their common interests without interference, intimidation or punitive action, yet they protest vigorously against granting that same basic democratic right of association to workers? Surely the

members of this committee must recognize the inconsistency, if not the clear hypocrisy, of a business representative opposing Bill 40 while at the same time exercising those very same rights of collective association.

For over a year now, voices within Ontario's business sectors have engaged in a campaign to dissuade foreign investment from locating in Ontario. We have been astonished by the number of reputable employers who have been caught up in the hysterics. Billboard slogans, reminiscent of political editorial cartoons found in Ontario around the period of 1943 to 1945, are an insult to the intelligence of our citizens and reveal a mentality inconsistent with Ontario's wellbeing.

Unfortunately, these slogans and attitudes have been parroted by some members of this Legislature. Suggestions that Ontario is an anti-business province, simply because of the introduction of legislation already commonplace in the world's strongest and most productive economies and designed as well to recognize that workers are entitled to relief from employer abuse, can hardly be characterized as pro-Ontario. These negative messages cast doubts upon the abilities and productive capacities of Ontario's hardworking men and women.

No doubt these voices also subscribe to a business opinion which appeared in the *Toronto Sun* on June 5 of this year, the day after the introduction of the legislation, an excerpt of which I will quote, "What the socialists in power at Queen's Park don't seem to realize is that labour is a commodity, like a can of beer, an automobile or a refrigerator."

The workers of this province, we can assure you, do not see themselves as inanimate, senseless, unintelligent, unthinking commodities. It would appear by the proposals contained within Bill 40 that the provincial government's view of the workers and their value to society, their worth and their dignity, is much more humane than the brutal view expressed by the *Toronto Sun*. We trust the opposition parties in the Legislature will distance themselves from this disparaging view and attitude towards workers and support the advancement of workers' rights proposed in the legislation before us.

We ask the members of this committee to focus on the fundamental issue before you, granting relief to countless thousands of Ontario workers who suffer abuse at the hands of their employers.

We want to be clear. We do not think that all employers are the same in their treatment of their employees. Ontario has many employers who treat their workers fairly and with respect. However, the reality is that many employers act in a punitive and negligent manner and do abuse their workers.

The records of the Ontario Labour Relations Board, the Ministry of Labour, the Workers' Compensation Board and the Ontario Human Rights Commission show that thousands of this province's workers have suffered sexual harassment, injury and death as a result of employer negligence. Many have been cheated out of statutory benefits, disciplined and discharged without cause, forced to work without statutory compensation and even threatened with deportation.

We believe many other cases never see the light of day because of the workers' fear of reprisal by their employers. Most often, these cases are to be found in non-union workplaces. We find it difficult to understand why business is fighting so hard to protect abusive employers and maintain an environment which will guarantee continued abuse of defenceless workers.

In this short introduction, we wish as well to ask members of the committee to keep in mind that business opposition to the advancement of workers' rights is not new, although the level of the current volume is somewhat surprising.

Employers have, as a matter of historical record, opposed, among other public policy measures, the Factory Act of 1884 prohibiting the use of child labour and establishing minimum workplace rules. They have opposed suffrage and the extension of a right to vote to women; reductions in the workweek of 60, 54 and 48 hours to the present 40; the removal from criminal law of the provision of engaging in a conspiracy if a worker joined a trade union; the Workmen's Compensation Act of 1915; the health and safety acts, Bills 79 and 208; public education; the Canada pension plan and, of late, pay equity and Bill 40, to name a few.

Employers have supported public policy measures such as wage controls, the Canada-US free trade agreement, unemployment insurance cutbacks, pension clawbacks and reduced social expenditures. On the other hand, enabling the most vulnerable in Ontario's workforce to gain fairness and equity has been met with opposition from most employers. Either through support or opposition to public policy initiatives, the pattern has been consistent: Any measure designed to help workers has been opposed by business spokespersons.

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As you have now gathered, the Ontario Federation of Labour is particularly interested in the amendments contained in Bill 40, not from any narrow, self-serving perspective, but from the perspective of fairness and equity for all working people. This is why we support the legislative initiatives in areas of pay equity and employment equity and this is why we support the labour law reforms contained in Bill 40.

We believe that more needs to be done for those working people in Ontario who need help the most: women, visible minorities and youth, who are increasingly employed in the poorly paid small workplace sector. We therefore would particularly like to draw to the attention of the members of the committee that part of our submission that speaks to the issue of broader-based bargaining.

The remainder of our presentation is contained within the following pages of this brief. For the convenience of this committee, we have indicated as best we can which amendments we support and why we support them and where in our opinion the proposals are either incomplete or as yet inadequate.

We are ready to respond to any questions on the foregoing remarks, and of course upon the content of our submission.

The Chair: Thank you, sir. We have about six minutes per caucus.

Mr David Tilson (Dufferin-Peel): I'd like to ask you a question that has to do with the matter of picketing and the right to organize. As I understand it, Bill 40 says that such matters can only be dealt with by the labour relations board and that no action lies to the court as to whether any of those matters are legal, the correct number for picketing, the proper restrictions etc.

The labour relations board is chosen by the government of the day. My question to you on this specific matter as to increasing the powers of the labour relations board, particularly when it can be quite political, is, is this a proper way of dealing with a matter such as this when we're trying to harmonize the relationship between the employer and the employee?

Mr Wilson: I wonder if I could just clarify what your question is. You're asking the difference between our preference with regard to a board procedure versus a court procedure?

Mr Tilson: I'm simply saying there is now no court procedure; it is all in the hands of the labour relations board. I'm submitting to you that when these matters involve questions of law, and particularly when the courts are independent on these matters and the labour relations board, because it's chosen by the government of the day, clearly may not be as independent on such very important matters, is that proper?

Mr Wilson: I think you have to rely upon the process which has been part of the culture of Ontario, which incidentally was introduced by your party's government. I believe you're a Conservative member.

Mr Tilson: Yes.

Mr Wilson: I believe it was introduced by the Conservative Party. It really said that rather than pursuing tort, workers and employers would rely upon a quasi-judicial body or agency to make decisions and which would be more familiar with the aspects of what those decisions would be. I think the same roots are found, as an example, in the Workers' Compensation Act where the tradeoff clearly was that workers gave up the right of tort or to pursue relief through the courts in exchange for a speedy and adequately rendered system of compensation, which we have some quarrel with and have had for some time, but nevertheless, I think that is clearly part of the culture of Ontario and one which the government is not, as we understand the bill, proposing to alter. We have not made any suggestion in that regard either.

Mr Tilson: I only submit to you that the whole purpose of labour is to get these matters out of the courts and into the Ontario Labour Relations Board where those types of matters have been more favoured on the labour side. I'm simply submitting to you that when those matters are dealt with by the Ontario Labour Relations Board—very important matters—on the legality of those issues, they will not be dealt with as independently as they would be by the courts, which are traditionally more independent.

Mr Wilson: I have some quarrel with that because I have some knowledge of the workings of the labour relations board. I think you really cast some aspersions upon the quality of those members advanced to the board from the labour community, the employer community and those individuals who sit as vice-chairs, and of course the appointment of the chairs themselves, whoever they may be.

Mr Tilson: I'm simply saying that those members are appointed by the government of the day.

Mr Wilson: That's not entirely true, sir, with great respect. They are in fact appointed by the government of the day, but certainly the way the system works, they are appointed based on the nominations, at least, from the business and worker constituencies, those people advanced by those constituencies as nominees.

Mr Tilson: Clearly, I submit to you that when you're dealing with matters of law, the legality of matters, quite appropriately those matters should be dealt with by the courts, as opposed to the Ontario Labour Relations Board. I'm not making any disparaging remarks about the Ontario Labour Relations Board. I'm simply questioning that there are some matters, specifically legal matters, that are more appropriately dealt with by the courts than by the Ontario Labour Relations Board. That's all I'm saying to you.

Mr Wilson: The board has some limitation on what its ability is as well. Those decisions of the board are subject to the courts in circumstances that are described as where the board has exceeded or gone beyond its jurisdiction, and there's quite a body of evidence to support that.

Mr David Turnbull (York Mills): Mr Wilson, to me the most interesting presentation we had yesterday was from the Christian Labour Association of Canada. The last sentence of their brief was, "One positive step in that direction would be to restore unions as voluntary organizations and prohibit the practice of compulsory union membership." I suspect you would find that certainly our party would be a lot more friendly to this legislation if that in fact were to be introduced. This was a trade union saying it believes something should be done to change the law, but this would be one of the most positive steps. Could you comment on that?

Mr Wilson: Mr Turnbull, I'm sure you would agree with me. Our federation represents 800,000 members in this province. If I remember rightly, the Christian Labour Association of Canada represents a membership of around 13,000, so it is on the margin of the views advanced by workers in this province through their organizations.

I would agree with you to this extent: Quite frankly, one of the most important and pivotal points of the legislation before us is to grant a worker the right to choose whether or not he wishes to belong to a union, and we very much support that initial choice as to whether or not workers wish to join a union. Of course, the legislation as it is currently constructed, prior to these amendments, also contains a provision to allow workers to exercise another choice, and that is to get out of a union if they decide they no longer want to belong in it. So I don't know to what extent, then, you're referring to the matter of choice.

Mr Turnbull: There's a school teacher in this province who very much objects to having union dues taken from him and sent, partly, to the NDP.

Mr Wilson: As I understand, in that case the Supreme Court agreed, as did lower courts, with the position of that worker's organization, that teacher's fellow workers.

Mr Turnbull: Excuse me, Mr Wilson, they agreed within the framework of the existing law. I'm talking about the aspect of being forced to belong.

Mr Wilson: This is not a society that's monolithic. There are many and varied opinions, and one worker out of, in fact, millions isn't a bad record for us and I thank you for the compliment.

The Chair: Ms Murdock. Please leave Mr Huget some time.

Ms Sharon Murdock (Sudbury): I will.

Thank you for coming. I want to ask a question we've been hearing an awful lot about from a number of groups in terms of the secret ballot vote for certification purposes. Although they haven't gotten into the process, they've just basically asked why we wouldn't even consider or wouldn't look at the possibility of going for a reasonable secret ballot vote after a certain number of memberships have been signed. I'd like your opinion on that, and if you agree, then the process that would be used, and if you don't agree, why not?

Mr Wilson: I assume—I'm making a presumption here, admittedly—this government has looked at a number of jurisdictions in forming the legislation before you. I presume the reason that provision has not appeared in the current proposals is that you have looked at the American experience. The American experience has been absolutely a disaster for working people, and I can give you a couple of examples.

I think what the vote does in that circumstance is lead beyond the possibility of, to the exercise of circumvention, and most important, delay. In the process of delay, as we all know, an employer that wishes to exercise the ability to intimidate its workers, harass them, put pressure on them within the workplace certainly has that ability. That's not to say all employers do that, but the opportunity is there.

1020

I think when you look at the practice in the United States around delay with regard to the vote, what you will find is that both parties, the workers' representatives and the employer's representatives, have the ability to appoint scrutineers to the process. So one of the ways you exercise delay is that your scrutineer, for whatever reason, can't be there on the appointed date. He is sick or he has another court case; often they're from the legal profession. As a result, the process is delayed considerably. Then you get into the environment where those employers who wish to exercise those methods that would not be conducive to allowing a person a free and unimpeded choice begin to happen. I think the records of the national labour relations board substantiate what I've just said.

Second, I would like to make this point: It also has attached to it a presumption that workers are not able to make a decision in their own interests. In my experience in

organizing—and many of my colleagues, who are seated here today and those who are not here but whom you might later hear from, will tell you—workers consider heavily and thoroughly, I would suggest to you and members of the committee, the decision as to whether or not they wish to join a union when they sign a card.

It is not a spontaneous act. It is one they clearly have lent some thought to and they make a decision on in the same way they make those decisions important to them when they go to the grocery store or when they are figuring out how much rent it is going to cost them or whether they can afford a mortgage.

Workers are not as the Toronto Sun and others may describe them. They are thoughtful people who think hard upon the decisions they're making, including joining a union.

Ms Julie Davis: I'd like to add one point about that. Unions want to know that a majority of the workers in a workplace are interested in belonging to that union, so when they sign a card they have in fact expressed a clear desire. The act requires more than a simple majority; in fact the act requires 55% for automatic certification. Balloting could be less than 50% of the workers in a workplace. You can't force people to vote. We know that from the numbers of the population that turn out to vote in municipal elections or federal elections or provincial elections. Municipal elections in particular are less than 50%. So the union could find itself in a position where it doesn't have a clear, expressed desire by a majority of the workers in that workplace. They'd much rather have a clear desire, which happens when the workers sign cards and those cards are submitted and the signatures are validated.

Mr Bob Huget (Sarnia): I'll get right to the point. Opponents of the reforms contained in Bill 40 point to a balance and suggest that there is a balance in the current Labour Relations Act, and then go further to suggest that the reforms contained in this bill will shift that balance. Is it your view or your organization's view that the current act is a fair balance between workers and employers? If it's not, what about it is unbalanced and unfair?

Mr Wilson: You're speaking of the current act prior to any amendments being placed upon it; let's be clear on that.

Mr Huget: Yes, sir.

Mr Wilson: No, it is not. If it were, if workers were given a clear, unimpeded right to make a choice whether or not they wished to belong to a union, I suggest to you the files in the ministry and the agencies I mentioned earlier would be considerably less than they currently are. The whole process has been one of attempting to circumvent that right and to delay that right.

Let me give you a case in point. In the city of Toronto, in which we now sit, in June of last year, 1991, over 5,000 taxi drivers voted as to whether or not they wished to belong to a union. These people are by and large those workers who are at the lower end of the income scale—we all know who they are—and some 14 months later as we sit here today, those ballot boxes have not yet even been opened to determine whether or not those workers, by expression of ballot, wish to belong to a union or not. That is all simply because of delay and circumvention.

The second point I make very quickly is that clearly with the introduction of the Canada-US free trade agreement, there is no question that the balance in collective bargaining, whatever there was, moved very quickly to the employer side. We have seen increased demands for concessions. We have seen employers threatening to close down and move to Buffalo. I'm sorry that even though the majority of the people of this country voted in opposition to that bill, the way the vote broke out the majority party now in power federally was able to sign that agreement. Unfortunately, it intends to exacerbate an already ugly situation by entering a North American free trade agreement.

Mr Steven Offer (Mississauga North): Thank you for your presentation. It's unfortunate that the time is so limited we aren't able to ask a series of questions on various aspects of the legislation in this short time allocated. However, I know my colleague Mr McGuinty has a question.

In your previous answer, you spoke about the need of workers in the area of the balance of the legislation, that they should be informed, that they should have a right of association, a right to join a union; none of which, I don't believe, anyone takes issue with. As you know, there has been a suggestion made that to promote that right, to promote the right of choice, of association, of the right to organize, full disclosure should be made, to an individual, whether he or she should join a union and what that entails, disclosure also from the employer's side, all of which is lacking in this particular bill, and that at the end of the day, in a free, open and democratic way, there should be the right to cast a secret ballot by the workers for or against the joining of a union, which is, I agree, a basic, fundamental right.

My question to you, Mr Wilson, is: What is the position of the OFL with respect to giving that freedom to the worker, in terms of full disclosure, to join or not to join a union, and to give to the worker the right to make his or her choice in a free, secret manner?

Mr Wilson: I agree that you have to reflect upon the record and the experience, and I can tell you—I would share this with you, because I don't believe, Mr Offer, you've had the opportunity to organize workers. I have, and so have many of my colleagues, and those of us involved in organizing campaigns know full well that when you make full disclosure, when you talk to the workers about your dues structure, when you talk to them about comparative collective agreements you have negotiated in whatever sector or industry they may be located in, those organizing drives tend to be more successful and the workers agree with you, see an advantage to joining a union and in fact do join the union.

Where union organizers are not as open about their dues structure, where they are not as open about how successful they have been in representing workers' interests, then the record also shows, I think, that those organizing drives tend more often than not to fail. So the balance in the process is whether or not you want to see workers join your union or perhaps another union that may be more open. We've had cases of that as well.

But again it goes back to the basic fundamental right of workers to make a choice based on the information before them, and I've found in my experience, and I'm sure many members around this table have, that working people are like the other citizens of Ontario, whoever they may be. They're very thoughtful, they're incisive, they look carefully at the issues before them and they come to a conclusion. In some cases they agree that a union is a benefit to them and they opt to join; in other cases they decide it is not and they do not, and that will be the reflection, I think, of this legislation when it is finally passed.

Mr Ken Signoretti: Can I just add something to that? It's always very frustrating when you get into this kind of a situation and you hear about workers' rights and full disclosure. There's always a connotation that the union organizer is trying to con a worker into joining the union. And that happens. I'm sure it does. There's no question about it.

The fact of the matter is that you try to fully disclose and you give the information to those employees. Those employees then join a union, and two years from now or three years from now, they have the right to decertify. I want to tell you right here and now that if there was complete lack of sensitivity towards the employees, they wouldn't stay in that union. They would get out of that union, believe me.

Mr Wilson: And they have.

Mr Signoretti: And they have, in some instances, for that reason. And let's be honest about it: It's because they have been conned. In the vast, vast majority of instances, you always find that there's full disclosure, that people understand, and people make those decisions. There's kind of a resentment here on my part when you think people, or individuals, can't make an honest decision on their own.

Mr Offer: Mr Chair, just before I commence, I don't know if there's enough time for a short supplementary and then a question by Mr McGuinty.

The Chair: One or the other.

Mr Offer: I'll have to yield the floor to Mr McGuinty, though I do have a supplementary.

Mr Wilson: I hope you guys are going to get around to the anti-scab question.

Mr Offer: Not enough time; we would very much appreciate addressing those questions.

1030

Mr Dalton McGuinty (Ottawa South): I appreciate your prompting there, Mr Wilson. Maybe I'll touch on that briefly. With respect to replacement workers, you know, one of the arguments advanced by the proponents of Bill 40 is that this is an important provision; it'll eliminate picket line violence.

But let's set that aside for a moment and look at another provision which provides that workers who do not form part of the bargaining unit will be given the right to refuse to work during the course of a strike. For instance, if I'm one of those workers, I do not belong to the bargaining unit and I am not on strike. I approach the picket line and my fellow workers tell me: "Look, hang on a sec. You now have the right to refuse. You didn't have that right before.

We don't want you to go in there." But I want to go in and work. Is it not reasonable to anticipate that this kind of provision is in fact going to lead to some kind of violence where hitherto it has not existed?

Mr Wilson: In most cases, Mr McGuinty, what you're referring to are supervisors—who incidentally we argued fiercely should be included in the legislation; the government has seen fit not to do that, as far as their ability to organize is concerned—or it would be some clerical workers if it were a production unit on strike. Our experience has been that in those cases, there really isn't much production going on. Quite frankly, those people were not very happy about having to do it in the first place, including supervisors incidentally, who we talked to and who I have as neighbours, as I'm sure you have.

The reality is that I don't expect there's likely to be heightened opportunity for conflict because the workers will be secure on the picket line knowing that we are now back to the balance which was presumed when the legislation was first introduced by a Conservative government in this province, and that was it's a simple economic contest: Can the workers hold out longer or can the employer hold out longer without the introduction of a third party, which must be rationalized and dealt with following the altercation? So I expect less altercation on the picket line. That has been the experience in Quebec as well.

The Chair: Gordon Wilson, Julie Davis, Ken Signoretti and Chris Schenk, on behalf of the Ontario Federation of Labour, we appreciate your participation and your valuable comments. We trust that you'll be keeping in touch. Thank you for being here this morning.

Mr Wilson: Thank you, Mr Chairman. For those members who feel there was not enough time, I would say on behalf of my colleagues that we would be prepared at any point to enter into a public debate before any audience on the subject matter with them.

The Chair: I want to remind people watching that we're at Queen's Park, that we're going to be sitting until 9 o'clock tonight and that these are public hearings; people are entitled to and encouraged to attend. There's seating for observers, and the public is heartily invited to come up here to Queen's Park and watch this in person. I want to tell people also there's coffee and some soft drinks at the side. Those are for the benefit of people visiting us. Please make yourselves at home and try to feel comfortable.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF CANADA, LOCAL 517

The Chair: The next participants are the United Electrical, Radio and Machine Workers of Canada, Local 517. Please come on up, seat yourselves in front of a mike. I'd also tell people of course that transcripts by way of Hansard are available of any part of these proceedings. It's simply a matter of contacting an MPP or the clerk of the resources development committee. Similarly the submissions, most of which have been made exhibits, are available to the public, any single one of them or a collection of them.

Please tell us your names and your titles. We've got till the hour. Try to keep your comments restricted to the first 15 minutes so that we have time for dialogue.

Mr Mike Menicanin: Thank you, Mr Chairman. We'll argue about that five minutes that we seem to have lost at the end.

The Chair: Maybe you want to take it up with Mr Wilson.

Mr Menicanin: He's already left. I'd like to introduce the members of the panel that we brought to Queen's Park. Mr Steve Farkas is a national staff representative for the United Electrical Workers union in Hamilton. Mr Gary Schryer is a relatively new local president of Local 517, which represents the outside city employees in the city of Welland. My name is Mike Menicanin. I'm a national staff representative for the United Electrical Workers union in Welland as well.

I'd like to start, Mr Chairman and members of the standing committee, representatives of the business community, brother and sister trade unionists, ladies and gentlemen. On behalf of the United Electrical, Radio and Machine Workers of Canada (UE) in the Golden Horseshoe area, we wish to thank you for this opportunity to comment on the government's initiative in the area of labour law reform.

We represent four locals in the Niagara region and a further nine in the Hamilton district and have agreements covering some 5,000 workers in a wide variety of occupations. UE Hamilton Local 504 has been in operation for over 55 years, Local 520 is in its 50th year and Local 523 in Welland will be celebrating its 50th anniversary in 1993.

As you can well imagine, our organization has represented workers in the days when there was little, if any, labour law and workers were forced to take direct action against their employers whenever they wanted recognition, fair treatment and a living wage for their families and for themselves.

We have survived successive federal and provincial governments that have reluctantly introduced labour law protection in the face of massive popular demand, as well as the obvious need to give employees at least some say in the workplace. We are before you today as a legitimate, well-established organization that has grown since 1937, both in our ability to represent the interests of working people and also to act as a force for positive social change.

Unfortunately, the sad fact remains that in the eyes of the business community, clearly evident in its response to the government's initiatives, we are still a radical and subversive element that needs to be suppressed. As far as business is concerned, things haven't changed since the days of Hal Banks. This is why we support the courage and the foresight of the NDP government of Ontario in bringing the issue of labour law reform to the forefront.

While most everyone across the province, business, governments and the population, agrees that we continue to experience very fundamental change in our society, this government has responded to change in a way that, in our opinion, can only benefit the average worker of Ontario.

Having said this, we must also express our bitter disappointment that you have held back as much as you have, not only from the recommendations made by the labour community in the Burkett report—the labour side, anyway—

Partnership and Participation in the 90s, but also you have retreated from the position taken in the Ministry of Labour discussion paper of November 1991.

We know only too well the massive pressure brought to bear by the business community's well-heeled and, in our opinion, utterly irresponsible campaign against these initiatives. In fact we don't think there has ever in the history of Canada been such an outright attack by representatives of capital designed not only to defeat proposed legislation but to undermine and ultimately destroy a government elected by the people of this province. We'll have more to say on this issue later in our presentation, but for now we'd like to address some of the specifics in the legislation.

We are pleased to see a purpose clause included in Bill 40. While this is an improvement over the current preamble to the act, it falls short of recognizing effective trade union representation as a catalyst in advancing equality between employees and their employer. In our view, the purpose clause sets the tone for the entire act and must be strongly worded. Certainly there remains room for considerable improvement in this area.

The right to organize has at long last been extended to those who were previously excluded. We can only take this as a positive move. However, the proposed amendments still make for some second-class citizens, the continued exclusion of supervisory employees being the most notable. Our union has long advocated the right to organize such employees. The argument of conflict of interest is easily resolved through the separation of bargaining units. We find it strange that a government which supports the right of everyone to freely join the trade union of his or her choice maintains a prehistoric attitude of the past.

The inclusion of domestics in the act is obviously welcome, but in reality it's only half a victory. This style of employment means separate workplaces, separate employers and security of their jobs continuously at risk. In order to put teeth into a domestic's right to organize, the act must provide for organization and representation on a sectoral basis. In fact the broad issue of sectoral representation is one that the government should revisit, due to the ever-changing employment structures in the province.

Protection from unfair labour practice is one of the most important issues facing workers. That's the right to choose to belong to trade unions and their ability to exercise this right without being molested by their employers. Acts of employer intimidation are commonplace during union-organizing campaigns. The government's proposal, even though an improvement over the existing process, falls far short of what is needed to protect the very fundamental right of a worker to choose to join a union. In our view, the only solution to this very real problem is the complete prohibition against discharge and discipline during an ongoing organizing drive.

1040

Now the business community will surely cry foul and charge undue interference in its ability to operate a business, but if it acted responsibly, and perhaps in the spirit of our direct competitors in the European market, we might even agree that this level of protection would not be required. I

ask you, Mr Chairman and other members of this committee, to look at the face business has put forward during this campaign. Is it a face expressing reason, or is it more like that of Nightmare on Elm Street's Freddy Krueger? I'll leave that for you to decide.

Regarding the access to third-party property, we welcome the improvements made for organizing and picketing purposes at direct entrances and exits to the workplace in question. We are very concerned, however, that the labour relations board properly interpret the term "undue disruption" as it applies to limiting these activities. We will be watching closely that this interpretation is applied in the interests of fairness and reassert our belief that access should be granted to areas such as parking lots and lunch-rooms for organizing purposes as well. We really do want to come out of the bushes and take the cloak and dagger out of the union organizer's job description.

Finally on this issue, we still believe that lists of employee names should be provided to unions engaged in legitimate organizing campaigns upon request. The confidentiality argument put forward by the opponents of this move is simply out of touch with today's reality. Just ask anyone working for Publishers Clearing House about the sanctity of names lists.

On membership fees, we support the government amendment that removes what has historically been nothing more than a frustrating loophole exploited by employers to delay the certification process at the board. The removal of the \$1 will make the establishment of union membership before the board easier, reduce taxpayers' costs and eliminate unnecessary delays.

On support for certification, we can only view this as a massive retreat by the government. In the November 1991 discussion paper the government's preferred option was absolute majority for automatic certification and 40% for a vote. While we support the move to 40%, the 55% level for automatic certification remains out of touch with other jurisdictions. We urge the government to reduce the level needed for automatic certification as set out in its 1991 document.

On anti-union petitions, it's high time Ontario moved in the direction of other Canadian jurisdictions in banning anti-union petitions after the union has applied for certification. The rampant use of these petitions has resulted in one of the most disruptive and costly aspects of workers trying to join unions, with protracted litigation before the board. As an organization, we can parade a host of examples where these petitions have been used as a weapon of fear during organizing drives. The target of this weapon was certainly the dignity, and often the jobs, of innocent workers. We firmly believe and strongly urge this government to take the final step to eliminate the use of anti-union petitions in its entirety.

In dealing with the structure and configuration of the bargaining unit, we welcome the advantages proposed regarding the consolidation of units, as framed in the government's proposals. We are, however, again concerned that this does not become another point of excessive and expensive litigation. The board will hold a major share of

the responsibility in ensuring that it is applied fairly and in the best interests of both parties involved.

We are also very disappointed to see that the government has backed away from the issue of facilitating employee access to collective bargaining. We know that many workers—and domestics are a prime example—face extraordinary physical and technical barriers when they consider joining a union. The government must respond to this need if it truly wishes to accomplish the goal of updating our labour laws to meet the challenges of today and the future.

On first-agreement arbitration, while we believe that the government's amendment to access first-contract arbitration after a 30-day period is an improvement, our union has argued that it should be granted upon application by the union.

The fact remains that there are employers out there who still have an attitude such as the one expressed by one of the more famous Tory MPs, Mr Don Blenkarn, who is quoted as saying: "The Canadian worker can either work harder for less money or not work at all. That's what competitiveness means." Well, 30 days of economic confrontation is not in the best interests of either party when trying to reach a first contract and certainly won't improve the labour relations climate in Ontario. When you're faced with that kind of attitude, first-contract arbitration may be the answer.

On the use of scabs, this has been by far the most controversial section of the proposed amendments. Since the introduction in 1978 of the Quebec anti-scab legislation, there has been considerable debate and study. The effects of that legislation have been carefully tracked. Their experience shows an improved labour relations climate and, more important, a drastic reduction in picket line violence. We are confident that the Ontario government's anti-scab provisions will also reduce, and hopefully eliminate, hostile picket line confrontation.

Recognizing the giant step taken by this government, this proposal also has some serious limitations, and they prove to be another retreat from the November 1991 discussion paper. The limitation on performing bargaining unit work during a strike would only apply to the workplace where a strike is occurring and it would allow the employer to shift work to another location or simply contract it out.

In addition, the significant change from the November 1991 paper would also allow those non-bargaining unit employees who work at the struck location to perform the work of strikers—another retreat. The shoddy attempt to cover up this move by giving those employees the right to refuse such work only goes to show how short the memory of the government really is.

Prior to breaking its promise by allowing wide-open Sunday shopping, the government introduced a bill that would limit Sunday shopping, giving those who did not want to work on Sunday the right to refuse. After some careful review and the application of good old common sense, even the government concluded that the right-to-refuse provision would be difficult to enforce and maybe even impossible. Well holy cow, Mr Chairman, here we are at the Ontario Labour Relations Act reform and it's back.

Further, there is no requirement on the part of the employer to advise the employees that they have the right to refuse.

The government released a fact sheet with its proposals and suggests that its initiative will shorten the duration of strikes and help Ontario in the new global economy. We can assure you, Mr Chairman, they are dead wrong. For as long as there remain loopholes for employers to exploit, as they have done historically, they will continue to do so. We believe that the government must fill these loopholes if we are to truly succeed in today's economy.

On the preservation of bargaining rights, in considering these proposals we recognize that they represent an improvement over the existing provisions, but we must point out that the relocation of businesses remains a major problem.

Our union, the UE, is no stranger to runaway plants, and we have been plagued in the past by this terrible example of Canadian corporate citizenship. While our union initially proposed in our response to the government's paper full successor rights for business relocations in the province of Ontario, in our view, in the world of Brian Mulroney and George Bush, we will have to extend it right down to the Maquiladora zone and beyond. We strongly urge that you address this problem if you truly support the right of workers to join unions and have a real say in the workplaces across the province.

Finally, on the issue of adjustment and change in the workplace, we can only observe that this is a very tentative step in the right direction and that the problem calls for a much stronger solution. If we agree that equal footing in the workplace is the right road to travel, it must be recognized that in the Ontario of 1992 we have a long way to go.

The points put forward in these proposals will be workable only if the workers have a very strong bargaining base and the employer happens to be magnanimous enough to agree to improvements during a plant closure or mass layoff; about as common, in other words, as a blue moon.

We have unfortunately had the experience of trying to bargain closure agreements recently in Niagara Falls. On the first day of the announcement, 60 workers lost their jobs; the vast majority lost them within the month. In that particular instance, the well-established union had limited success with a somewhat responsive management, but the net effect left much to be desired.

In conclusion, the government is to be commended for initiating a full consultation process, hearing all points of view and for proposing from these consultations significant amendments to the act. We urge the government to consider our comments and continue with the reform of the act.

It's unfortunate that there are still some of those in the business communities who continue to wage war on the government and these proposed amendments. May we take this opportunity to remind this committee, for the benefit of our Liberal and Tory friends, that throughout history business has opposed progressive change: child labour laws, women's rights, workers' compensation, health and safety. There has always been a fight with the employer community.

How could we help but note the behaviour of both the organized business lobby and some members of the Ontario

Tory and Liberal opposition when it comes to the important matter of labour law reform? As far as the business community is concerned, let us simply set the stage by considering the learned remarks of one of the big business giants, a man who has surely inspired many business administration students, including, we're sure, some of our opposition friends. We're speaking, of course, of Mr Conrad Black, who writes on labour law reform from the hallowed pages of the business bible, the *Financial Post*. We quote:

"I have in the past applied a few flourishes to my descriptions of the Rae government, but in this case it is nothing less than the truth to say that the provincial government plans a union usurpation of the means of production, expropriation without compensation." Very reasonable remarks.

1050

Let's deal with one of the descriptive flourishes from Mr Black, and we again quote:

"Unless the Ontario business community fights effectively for its life and the government of Ontario has a spontaneous or induced deathbed conversion to the incentive economic system, Canada's prosperity and status as a member of the Group of Seven will be martyred to the innumerate Luddite biases of the NDP. And not even the traditional NDP at that; Bob Rae's government is a bagel of single-issue fanatics: militant homosexuals, feminists, abortionists, ecogeeks, worker radicals and social agitators, standing and shrieking on each other's shoulders. This is neither novelty nor democracy."

The most unfortunate thing about this attitude is that it's not exclusive to Mr Black. This somewhat hysterical tone can be found in business attitude towards labour law reform as a whole. This ongoing terrorist-style campaign is, in a word, bizarre. We strongly suspect that the labour law reform is really a front for the much more sinister agenda, which is simply the destruction of the New Democratic government.

We strongly suggest to the members of the opposition that they would be wise to distance themselves from the tactics of Ontario's big business lobby. They should spend less time cataloguing our beautiful provincial lakes and direct this wasted energy to assisting the government in bringing business and labour together in dealing with the very real problems we face in this rapidly changing world. We strongly believe that a prosperous future depends on meaningful partnerships, even if some of the parties have to be dragged into it kicking and screaming.

We want to thank you, Mr Chairman, and just note that there is in the package that was distributed an article from yesterday's *Welland Tribune*, where a member of the business community says: "Unions will not have to go back to their members with the employer's final offer. They (unions) can say no. The members will be at the mercy of their union leaders."

This is representative of the kind of comments being made by the business community. It is totally inaccurate and incorrect. The *Welland* chamber of commerce made that comment. They will be here next week, and some of the members of the committee might want to ask them where they got that information.

Mr Len Wood (Cochrane North): Thank you for coming forward with a good presentation. I notice that you all have buttons on: "Labour Reform, It's About Time."

Leading into my question, part of the reason why the bill has been brought forward is to reduce conflict, confrontation and have good labour union relationships in the changing workforce that has taken place over the last number of years. I notice that, on page 10 and again on page 13 of your presentation, you're talking about replacement workers and how that affects the relationships that go on afterwards.

Personally, in my community in northern Ontario there's a monument up. A few years ago, where replacement workers were brought in, hunting rifles were brought out and 11 people ended up on the ground. Three died and eight ended up in the hospital. The monument is along Highway 11, which is an extension of Yonge Street up there. I want to know what your experience has been as far as replacement workers are concerned and how that affects the community and the workforce.

Mr Menicanin: I've had two experiences with a strike. One fortunately did not involve replacement workers and one did. All I can note is that while they were both difficult situations, the strike—and it was in Niagara Falls—that did use replacement workers left a bitterness not only at the workplace that had to be dealt with for some six or seven years—before the plant closed, mind you, and the bitterness was still there. It also left a bitterness in the community, because you find that replacement workers are your son or your daughter or somebody who's in desperate economic straits. In our opinion, they're being exploited, especially in today's economy.

In the other community the strike was again difficult and there was some hard feelings afterwards, but there was no lingering hatred, I suppose, because of the confrontation the scab issue produces. Personally, I noticed a vast difference, and frankly it was a lot easier to work through the one company after the strike than it was with the other.

The Chair: Mr Fletcher, a short question.

Mr Derek Fletcher (Guelph): Thank you, Mr Chair. Just a really quick question. Does your union or any union you know of actively go out to destroy a business, to create disharmony in a workplace? Are you working with or against?

Mr Menicanin: Let me give you a quick answer. I think if we went in to actively destroy a business, the members of that particular place of employment wouldn't have us as a union any more. We're there to try to preserve employment to our best ability and to represent the needs of our members. Certainly we wouldn't be shooting ourselves in the foot that way.

The Chair: Thank you. Mr Offer.

Mr Offer: Thank you very much, Mr Chair. We'll have two very short questions because of the limited time permitted.

Just as an opening comment before I get into my question, I must say, if I can share this, there is some concern when, for instance, you've characterized the business community and its opposition and its campaign exercising its

right to comment on its concerns about the bill as something evil.

As an opening comment, I think that's a basic right that we all share. If people feel that there is something about a piece of legislation they have concerns about, they have the right to do that. It's very similar to the right for yourself to wear the button you're wearing now, "Labour Reform, It's About Time." It's very similar to that right. It's very similar to the right I believe the OFL exercised when it had radio ads commenting about the other side of the bill.

I must say as an opening comment that I find it disturbing that when one group wishes to exercise its right in terms of its concerns about a bill, that somehow is evil, whereas if someone is using the same right in talking about why the bill is necessary, that happens to be good. I find that disturbing.

My question, however, is that in your presentation you say, "The right to choose belongs to a trade union." I would like you, if you could, to please expand upon that, because I believe it has been indicated earlier on that this right is not to a trade union, it is to an individual. I would like you to expand upon why you feel the right is to a trade union.

Mr Menicanin: My apologies, Mr Chairman and members of the committee. We put this brief together last night very late and did not run through a final draft. That particular section is a typo, and if you listen to the remarks I made as opposed to what's in the brief, the right is not for a trade union; the right is for a person to choose. I have to apologize. There are a number of typos in this particular brief. If the committee wishes, when we do a final draft we will send you another 25 copies. We wanted you to have the best we could produce in the short period of time allowed.

Just to respond to your initial remark, Mr Offer, I suppose that the evil, if you want to use that term, is the inaccuracies, the misleading statements that are being made by members of the business community. We don't support going to a newspaper and telling lies, and that's what's happening. Now, if you think that they have the right to do that, you're absolutely right. They do. They have the right to lie or they have the right to mislead. But we don't support that as something that's right. If we want to be fair about it, let's talk turkey. Let's talk reality. Let's not spread fear, and that's what's happening.

Mr McGuinty: Yes. One of the things that really holds a lot of appeal to me is a statement in your presentation here where you said, "We really do want to come out of the bushes and take the cloak and dagger out of the union organizer's job description." If I could broaden that, I think we could say that we want to take the cloak and dagger out of the union organization.

Am I being too idealistic if I can foresee some kind of process whereby an employer is required to allow reasonable access in order for union organizers to meet the employees? The process would also require that the employer have an opportunity to address the employees in that regard as well, and subsequently, after some period of time, there would be a vote, a secret ballot to determine whether

or not they're going to have a union. Am I being overly idealistic? What is unfair with that kind of process?

1100

Mr Menicanin: Simply, Mr McGuinty, the employer holds the economic life of that worker in his hands. For whatever reason, an employer can decide to terminate an employee if he does something he doesn't like.

Our experience in organizing campaigns is very simply that when the employer gets wind of an organizing campaign there are activities, to some degrees lesser and to some degrees greater, to try to convince employees that they should not have a union. If I go, for example, to a vote and the employer scrutineer is my production manager or the man who signs my paycheques and he looks me in the eye and I know what he's thinking, then I don't think you're going to get the result you really want.

I think individual workers should have the right to express themselves by signing membership cards, by making a commitment with their signatures, and in our opinion 51% should be sufficient for automatic certification. We said that in our brief. We don't think the climate in a workplace where there's a vote to be held is fair. It's not going to be fair to those employees because of our experience where intimidation has taken place.

Mr Ted Arnott (Wellington): How much time does our caucus have?

The Chair: You have the same time as everybody else, two questions.

Mr Arnott: Thank you, gentlemen, for coming in this morning. To follow up on that last question from Mr McGuinty, do I understand correctly that your union is opposed to a legislated requirement of a secret ballot for ratification and acceptance of a final contract offer?

Mr Menicanin: I don't think that was the question. The question was some kind of vote.

Mr Arnott: That's my question. Are you opposed to that?

Mr Menicanin: To what?

Mr Arnott: To a legislated requirement for a secret ballot on those matters?

Mr Menicanin: On organizing?

Mr Arnott: On ratification of contracts or acceptance of final-contract offers, for example.

Mr Menicanin: First of all, I don't know that is part of the reform being proposed by the government.

Mr Arnott: No, but that is a private member's bill before the Legislature at the present time which has been sponsored by a member of our caucus.

Mr Menicanin: Yes. Frankly, I can only speak to our experience. We have a secret ballot in my local. Our shops certainly did not come here today, though, to discuss another piece of legislation.

Mr Arnott: It's labour law reform we're trying to discuss.

Mr Menicanin: We're here to discuss Bill 40. I don't know whether that's—

Mr Arnott: I guess we're hoping to see amendments to Bill 40, as well, coming out of this committee process. We hope that might be one of the outcomes.

Mr Menicanin: So would we. I don't know if that's the amendment we would be asking for.

Mr Arnott: So you're not going to answer my question.

Mr Tilson: I'd like to ask for your comment with respect to the fact that there now will be no protection for individuals to change their minds in the certification process. That has been taken out, notwithstanding the fact that that may not be explained to them. The whole process may not be explained to them. They may not understand what they're doing etc. Could you comment as to what your position or your union's position is on that specific provision?

Mr Menicanin: You're speaking, Mr Tilson, about the issue of petitions?

Mr Tilson: Yes.

Mr Menicanin: I think, again, we're very strongly in opposition to petitions. The way a trade union is set up—

Mr Tilson: No, my question was about the provision that when an application is made for certification, individuals, employees, cannot change their minds if they have voted in support of certification.

Mr Steve Farkas: Our position is very, very clear and I think it's spelled out in the brief. Through our experiences, Mr Tilson, we have run into situations time and time again with the question of petitions where the decision to change one's mind regarding union organization or the signing of a union card is, in most cases, employer driven by the use of certain intimidation tactics by the employer.

Of course our position, as far as we're concerned and what you see in our brief, is quite simply that we do not believe, once that card is signed, there should be the right to change your mind. Working people aren't ignorant. Working people are intelligent people. They ask questions of union organizers. I don't know where the idea or the perception comes from that you simply go to a doughnut shop, hand out the union cards and everybody signs them. That's not the case. Hours and hours sometimes are spent explaining the process, explaining what the union does and explaining the collective agreement in order to secure a union card. It's not a misinformed decision by an individual; it's a very well-informed decision.

The Chair: I want to thank Mike Menicanin, national staff representative, Steve Farkas, national staff rep from Hamilton, and Gary Schryer, president of Local 517. Mr Schryer, it's Wednesday in Welland. I don't know whether it's one of those Wednesdays that made it possible for you to be here or not, but in any event—

Mr Menicanin: It'll be wacky next week.

The Chair: —the committee welcomes, enjoys and appreciates your comments. The Hamilton-Niagara region has a long and significant history and you've made a valuable contribution to this process. Thank you to you and your membership.

We will await the edited copy of your brief to be made an exhibit. I trust you can have that to us before the end of next week.

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

The Chair: The next participants are representatives of the Ontario Association of Children's Aid Societies. Please come on up and have a seat in front of a microphone. Tell us your names, please, and your titles. We've got until the half hour. Please try to restrict your comments to the first half of that so we have time for exchanges.

Ms Louise Leck: My name is Louise Leck. I'm the manager of education services and accreditation at the Ontario Association of Children's Aid Societies. With me is Mr Sylvio Mainville, the executive director of the Hamilton-Wentworth Children's Aid Society. After I conclude my opening remarks, Mr Mainville is prepared to give you some specific examples about managing a children's aid society through a fairly lengthy strike situation so that you'll have some practical things to think about in terms of what's involved.

This legislation in its current form, we feel, poses a serious threat to the "best interests, protection and wellbeing of children," which is the paramount objective of the Child and Family Services Act, under which children's aid societies are designated.

Children's aid societies are mandated to ensure the protection of children and the prevention of circumstances which would require their protection. Portions of this proposed labour legislation puts the demands of the workforce ahead of the needs of children during a strike or lockout. We feel children should not be put in second place.

When this proposed legislation forces CASs to choose between their responsibilities to protect children under the Child and Family Services Act and obeying certain provisions of the Labour Relations Act, their choice will have to be clear. From a policy perspective, children's aid societies must and will continue to protect children first.

We will speak to you about three aspects only of the legislation which in particular affect children's aid societies' ability to provide adequate services to children during a labour disruption.

Just some background, first of all: There are 54 children's aid societies in Ontario, three of which provide services exclusively to native children and families. The remaining 51 provide services to approximately 79,000 families per year whose children are living with them in the community. In addition, they provide residential services for another 20,000 children per year, and many of these services are mandatory under the Child and Family Services Act.

CASs are required to investigate all allegations that a child may be in need of protection and respond to crises involving children on a 24-hour-a-day basis. Legislation and government standards require that societies respond within certain defined time lines. Some of the services which children's aid societies must provide are described in our brief, and Mr Mainville will speak to those in a few minutes.

The kinds of services we provide are provided by approximately 3,000 front-line social work, residential child care and clerical staff in 51 societies. The majority of those societies, 40 of them, and the majority of front-line staff, 2,700 of the 3,000, are unionized already.

Social work, legal and residential child care services must be provided by staff with particular professional qualifications. Children's aid societies have on the whole enjoyed constructive relationships with their unions. A recent survey of our member societies, with 31 of the 40 reporting to us, revealed only eight strikes, ranging from a few days to three months over the last 10 years. In fact, CASs have worked very hard to improve staff salaries, benefits and working conditions in order to attract and maintain the well-qualified and experienced workforce we need to provide quality service to children.

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Before proceeding further, it's important to state clearly that the majority of employers in our sector have been operating successfully within the current labour legislation and see no compelling reason for the major changes which are proposed in the revised legislation before us now.

Children's aid societies were alarmed when the suggested revisions to the Labour Relations Act first became public, and they voiced their objections to the Minister of Labour around three particular changes. The first is the expansion of the bargaining unit to include supervisors; second, removing the exclusion of professionals such as lawyers, and third, prohibiting the use of replacement workers.

These revisions would, each in its own way, compromise a CAS's ability to provide the mandatory services required under the Child and Family Services Act, leaving children in danger and child welfare authorities in breach of either one piece of legislation or the other.

The minister has responded, in part, to two of these three areas of concern in the proposed legislation. I will review briefly our reactions to what the proposed legislation says on these three issues.

First, the exclusion of supervisors from the bargaining unit: Child welfare authorities were relieved that supervisory staff will remain excluded from the bargaining unit. Supervisory staff in our system are essential to the ability of a CAS to provide mandatory services during a work stoppage.

However, a serious problem with the proposed legislation still remains where supervisors are concerned. The use of newly hired managerial staff is prohibited in situations where these staff have been hired or transferred into their positions after the earlier date of either the notice to bargain or the date on which bargaining begins. In practical terms, this prohibition could put unnecessarily harsh restrictions on CASs, particularly on small and medium-sized ones. Children's aid societies come in various sizes. For example, two of them have a total of only three managers each, and 12 others have between four and six. At the other extreme, the large urban societies have between 54 and 108 management positions to work with.

Consider the following scenario, which would not be unusual in a small children's aid society: 16 months may

have elapsed between the notice to bargain and the commencement of a strike. Two of the society's three complement social work supervisor positions came open and replacements were made during that period. Two other management positions that the society has are executive director and business manager.

In this scenario, the society would have only one supervisor and one executive director who would be qualified to provide mandatory social work services without resorting to the complex bureaucratic process for having prohibited, "newly hired" managers approved as specified replacement workers. While it is possible in a strike situation that the union might simply consent to these new managers being approved as specified replacement workers, it is also quite likely that the union would not.

This prohibition unfairly penalizes societies which have simply had the unavoidable and unpredictable misfortune of turnover within their management ranks after the union had served notice to bargain. It also increases the level of bureaucratic process with which the employer must deal while trying to provide basic essential services to children, and it leads to costly Ontario Labour Relations Board hearings.

Our second concern relates to the removal of the exclusion, particularly for legal staff in children's aid societies. Most CASs have legal counsel on staff to handle the court-related requirements dictated by the Child and Family Services Act. These lawyers are specialists in child welfare related legislation and are critical to societies' ability to discharge properly their legal obligations under the CFSA. Societies' legal obligations remain during strike situations. Our legal staff has special expertise which cannot be duplicated either by contracting out with outside firms or by using non-legal personnel.

The Minister of Labour, in a June 17, 1992, letter to Jim Wilson, MPP for Simcoe West, said, "Children's aid societies could be affected...but the impact of this amendment cannot be accurately determined in advance." We are concerned that the minister is prepared to proceed with this change without examination of the potential consequences, particularly in our sector.

The possibility of lawyers organizing their own bargaining units would be an issue only in a few of the largest societies. In the majority of small and medium-sized societies, however, the one or two legal staff would simply become part of an existing bargaining unit. CASs without the necessary in-house counsel during a strike, but required to meet their legal obligations under the CFSA, are again put in a position where they must choose between violating the Labour Relations Act or the Child and Family Services Act.

The state must ensure that CASs are making appropriate and timely decisions about children who are alleged to be abused or neglected. The court process and the safeguards for children and families that it represents must not be compromised because societies do not have access to qualified, experienced legal staff.

Similar problems may arise in the larger societies which employ psychologists and other specialists to provide in-house assessments of children receiving CAS services. If societies are not permitted to purchase such

services from outside contractors, then once again employers are faced with the need to break one law in order to fulfil their obligations under another.

Our third issue concerns the permitted use of specified replacement workers. First of all, let me say that children's aid societies are pleased to see that the government has recognized that certain essential, mandatory services must be maintained during a work stoppage, using replacement workers if necessary.

The proposed legislation states very clearly that such workers will be permitted to provide residential care for children in need of protection to assist those children to live outside a residential care facility and to provide emergency shelter or crisis intervention services to children in need of protection or victims of violence, and also to prevent danger to life, health or safety.

At first glance these exemptions appear to allow CASs the necessary resources to carry out their mandatory requirements. On closer examination, however, a number of troubling issues arise which require some further clarification and thought. Replacement workers may be used but "only to the extent necessary to enable the employer" to provide necessary services or prevent danger to life, health or safety.

The burden of proof lies on the employer to establish the level of staffing required to provide the essential services. Reasonable estimates can be made by children's aid societies based on the requirements of the legislation, current service patterns and demands and the assessed level of risk to children in individual cases which the society is dealing with.

Problems are likely to arise in a strike situation, however, when the union is asked to consent to a society's estimated level of need for provision of mandatory services and number of replacement workers required. If the union consents, there is no problem for the CAS in going ahead to provide those services. If the union, however, disputes the society's estimates of the level of staffing to provide the services or disagrees with the society about the specific services that are mandatory, what then? The obligation of CASs to deliver services to children in need of protection cannot be subject to the whims of union representatives during a labour dispute.

Although the employer appears to have the right to use specified replacement workers in emergency situations and inform the union later, the union's agreement still seems to be required. What if the union disputes the employer's definition of an emergency and its subsequent decision to utilize a replacement worker? It appears that such disagreements must be settled by a labour relations board, which will give directions about the manner and extent to which the employer may use replacement workers and modify any determination or direction in view of a change in circumstances.

We view with grave concern the apparent granting of powers to a labour relations board to interpret a CAS's accountability to provide mandatory services under the Child and Family Services Act. CASs may be placed in the untenable position of choosing between their accountabilities under the Child and Family Services Act and a direction or determination of a labour relations board.

Once again, this legislation virtually necessitates violations by conscientious CASs that are acting as substitute parents and must put the safety and wellbeing of their vulnerable clients first and threatens to increase dramatically the number of time-consuming and costly labour relations board hearings.

The proposed legislation requires that employers use bargaining unit employees to perform proposed work to the extent that the trade union has given its consent and employees are willing. We see this as a constructive provision and support it as providing an opportunity for some bargaining unit employees who wish to work to be able to do so and also as providing clients with services from experienced workers during a strike situation. So we're pleased to see that provision there.

While the government has on the one hand provided relief for mandatory services from the no replacement worker rule, it has on the other hand devised such a complex bureaucratic process for obtaining this relief that we feel ridiculous amounts of time and money will be spent on preparing for and participating in the hearings that would be required to make these arrangements.

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In conclusion, we would like to recognize again that the proposed legislation has responded to the need to provide certain essential and mandatory services to vulnerable populations and allow the use of management staff, bargaining unit employees and other replacement personnel in certain situations.

But the proposed legislation at the same time, we feel, throws up excessively costly, time-consuming bureaucratic roadblocks to children's aid societies that must provide mandatory services, forcing local definition and constant bargaining over what and how much service is essential during a strike situation when mutual consent will be highly unlikely; allowing the Ontario Labour Relations Board to be the final arbiter of need defined under the Child and Family Services Act; restricting the use of newly hired management staff; removing access to specialized services provided by staff lawyers and psychologists and, finally, placing CASs in constant conflict between their obligations to children under the CFSA and the requirement of the Ontario Labour Relations Act.

We ask that the government consider the following three recommendations.

1. Remove restrictions on the use of newly hired management staff in covering bargaining unit work. These management staff are simply filling complement positions and should be allowed to provide service.

2. Exclude staff lawyers, psychologists and other specialized professionals in mandatory services from union participation.

3. Permit a child welfare system definition of mandatory services which must be provided to meet CFSA requirements, thus eliminating the necessity of bargaining this particular issue in each strike situation and hopefully reducing the number and related costs of labour relations board hearings which would otherwise be required.

The government must remove the obstacles to the provision of basic mandatory services which this proposed

legislation puts in the way of children's aid societies, which are simply doing what they have to do under the CFSA. This labour legislation in its current form threatens the best interests, protection and wellbeing of children. This is not acceptable. The government must put first and foremost, ahead of its other agendas, the protection of the best interests of its youngest and most vulnerable citizens.

Thank you, Mr Chairman, for this opportunity to put our concerns and recommendations before this committee. Mr Mainville would like to provide you with some information about a specific strike situation and the kind of services which a CAS actually provides during that kind of situation.

Mr Sylvio Mainville: I have a few comments just to give you a brief picture about our situation in Hamilton, where we had a three-month strike between April and July 1989. Again our interest is simply to be able to respond effectively to the requirements of the legislation for the protection of children. I'm sure that you share that objective with us.

Here are some of the basic services that we provided during that three-month period. We received 677 referrals for children in need of protection. This included children where there are some concerns that they may be abused. It included situations where there's severe marital conflict between the parents and other situations where children are in need of protection.

The society had, during that period, 414 kids in its care and custody through the courts. As well, it also provided mandatory services to 447 active protection cases. That gave us a total of 1,538 mandatory cases that we had to provide service to with 25 people, which is about 20% of our workforce.

Let me break that down a little bit more for you. For example, an admission to care requires approximately 24 hours of service. This includes work around preparing the child; it includes taking the child for a medical assessment and services related to the placement of the child who is being separated from his natural family and placed usually in a foster home. This information is from a workload study that was conducted in southwestern Ontario.

An initial child abuse investigation requires 15.5 hours of service. That's simply a very preliminary investigation which includes a record check, checking with the provincial child abuse registry and often involves a face-to-face contact and a basic assessment about the family situation to determine if the child is in fact in a situation where he's being abused and where further service needs to be provided.

During that period we provided 246 mandatory visits to children. Under the legislation, when a child is removed from his home and placed in a foster home, within seven days and 30 days visits have to be made. As well, other visits need to be made on a regular basis to supervise the children in foster care and other resources the society uses for children in its care and custody.

During that three-month period there were 176 court appearances. I want you to pay particular attention to that, because the exclusion of lawyers would have placed the society under considerable stress. We have three full-time

lawyers on our staff, and there were again 176 appearances required during that three-month period.

Some 177 of the 447 active protection cases we had were identified, based on specific criteria we utilized, to be medium- to high-risk, so those were cases that required ongoing service during that three-month period.

I went back to check on some of our records. If in fact we had to comply with what is being proposed, which is not to have the ability to make use of supervisors who were hired following the notice to bargain being issued, there were three supervisors we would not have been able to use.

I want to go back to the earlier comment that was made by my colleague. There are 14 children's aid societies in Ontario, places like Norfolk, Haldimand, Dufferin, and Timiskaming in northern Ontario, that have six or fewer managers and would be severely hindered in trying to meet the requirements of the legislation and in effectively protecting children if they were not able to make use of supervisors who are hired after the notice to bargain has been issued.

Mr Offer: Thank you for your presentation. I think many people in the province will be extremely alarmed by the provisions of Bill 40 when they recognize and realize, as per your submission, that what is in the best interests of the child may in fact be delegated to the Ontario Labour Relations Board in this province. I think that would cause some great concern, taking it out of the hands of the children's aid society.

It seems from your submission that what you are requesting is that the replacement worker provision not apply to anyone within the employ of the children's aid society in a variety of tasks. I'm wondering if that is a fair characterization of your position, and as a supplementary, whether, if that doesn't happen and there is work stoppage, you will necessarily find yourself in contravention of the principles and the purposes of the Child and Family Services Act of this province, where your paramount objective is to promote the best interests of the child.

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Ms Leck: I can respond to that, Mr Offer. First of all, some portions of the replacement worker clause are quite acceptable to us. For example, we're quite happy to have bargaining unit employees that the union agrees to have work work in the case of a stoppage. That's best for clients, to have people who are experienced and who know the community and the case load. That's in the best interests of everyone. We're also happy to have supervisors being able to replace, with the concern that we should have all supervisors, not just those who might have been there a long time.

Our concern mainly is with the process by which you would have to obtain permission to use specified replacement workers. What we've suggested in our third recommendation—although it's not a detailed sort of recommendation—is the idea that we think it's important to come to some general agreement about specific kinds of activities and services the CFSA requires us to continue to provide during a strike, and not have to go through the process of bargaining each and every time. We feel it's unnecessarily cumbersome.

In fact, the whole process of child welfare requires you to respond to situations when they happen. We'll frequently be going out and saying there is an emergency and that we're going to deal with it and then having to argue about it later.

What we're looking for is some way to reduce the need for lengthy and costly arguments before the board in order to provide services we have to provide anyway, and simply because of a strike situation the parties may not mutually consent. We would like some provision that would allow us to make that arrangement ahead of time, so we don't have to argue in each and every situation the merits of providing a service to children who are ordered by the court to be supervised in their own homes. We have to do that. If a union doesn't agree, we still have to do it and break the provisions anyway.

Mr Tilson: You touched on an area that gives me great concern. I represent one of the communities you spoke of, and that is the county of Dufferin, which doesn't have the size of staff other societies have. The system goes on, the social problems continue, the problems that end up in the courts continue, and the general advice that you give and the general protection to children when it's required continues. I believe there clearly will be some violations of the act, of other pieces of legislation, if these recommendations go through and that you—not you individually but members of the children's aid society—will end up possibly violating other pieces of legislation.

That's my personal view and you may or may not agree with me, but my question really is, what will happen to the system if the recommendations you're putting forward—I'm dealing specifically with these smaller types of communities. What will happen to the system, the legal system, just the general operation, the general protection of the children?

Mr Mainville: It's difficult to predict what the exact outcome is going to be, but I think it's easy to anticipate. Again, I appreciate the comments you've made. We certainly share your concerns and I could not express them any better than you have, particularly with respect to smaller children's aid societies in Ontario. I don't see how they could continue to respond effectively to the needs of children we need to serve under the mandatory legislation we have in this province. It is very good legislation, but how we could respond effectively to the "best interests, protection and wellbeing of children" would be something that would be very difficult and I believe would place some children at risk, particularly in those small areas of Ontario that do not have the resources we have, for example, in Hamilton, where that danger would not be as severe as in your own county.

Mr Brad Ward (Brantford): I appreciate your brief. I found it very informative. I noticed, unfortunately, that labour disputes do occur in children's aid societies. In fact, there is one, effective yesterday, in Durham where 80 employees, including clerical to social workers, have felt compelled, for whatever reasons, to reluctantly walk off the job. The existing managers, it's my understanding from a

newspaper article, will be doing the work on a priority basis etc to ensure that the children's needs are taken care of.

From my understanding and listening to your brief, it appears that my reading of section 73.2 in the bill would cover your concerns in these unfortunate cases where a labour dispute does occur. It may be advisable for you to have a meeting with ministry staff to run over scenarios, because it's my impression that there's perhaps a misunderstanding of the process and the intent of that particular section. As I read it, it appears to deal with your concerns as far as ensuring that children are taken care of is concerned. They're the primary concern from the standpoint of society, your organization as well as our government and the people of Ontario.

My question deals with the professionals' right to organize children's aid societies across Canada. The professionals' right to organize is already allowed in the federal jurisdiction, BC, Manitoba, Quebec, Newfoundland and Saskatchewan. I'm wondering how children's aid societies have dealt with that and what impact, if any, it has had, because that may be something else you have a fear of.

It is a change here in Ontario, but it is in place in the federal jurisdiction and in BC, Manitoba, Quebec, Newfoundland and Saskatchewan. I was just wondering if the children's aid societies in those locations have been impacted at all by professionals being given the right to organize in those jurisdictions, which has already been in existence, in my understanding, for many years now.

Ms Leck: I can't speak to that except to say that children's aid societies in Ontario are organized differently than in most other provinces. They are part of direct government services, as opposed to independent corporations.

Mr Ward: Is it possible in terms of clarification—

The Chair: No; stop.

Mr Ward: Okay. Thank you for the answer.

The Chair: Ms Leck and Mr Mainville, the committee thanks you very much for what has been a novel insight into the impact of the legislation. We appreciate the time you and the association have spent preparing the submission. We appreciate your coming here to the committee today. We trust that you'll keep in touch, and we thank you sincerely. Take care.

LUMBER AND BUILDING MATERIALS ASSOCIATION OF ONTARIO

The Chair: The next participant is the Lumber and Building Materials Association of Ontario. Would the people presenting that brief please come forward and seat yourselves in front of a microphone. I'm reminding other people here visiting that there's coffee and soft drinks behind the TV camera. Make yourselves at home. Please tell us your names and your titles and then proceed with your submission.

Ms Hannah Hancock: My name is Hannah Hancock. I'm the executive vice-president of the Lumber and Building Materials Association of Ontario.

Mr Steve Johns: My name is Steve Johns. I'm the member services manager for the Lumber and Building Materials Association of Ontario.

Mr Ernie Forsey: My name is Ernie Forsey. I'm the vice-president of human resources at Cashway Building Centres Inc.

Ms Jill Kitchen: I'm Jill Kitchen, manager of human resources, Lansing Buildall.

Ms Hancock: It gives me great pleasure to address this committee in my capacity as executive vice-president of the Lumber and Building Materials Association of Ontario.

The LBMAO is a not-for-profit trade association that represents some 900 retail lumber and building supply stores in Ontario. The LBMAO's retailer members, ranging from the major chains to the small independents, generate over 80% of the industry's total annual sales volume in Ontario of approximately \$4.5 billion. The LBMAO also has some 250 associate members. Included in this category are manufacturers, wholesalers, distributors and buying groups, among others. In short, the LBMAO is the largest and most diverse regional building supply association in Canada.

After having had an opportunity to review Bill 40 and the supporting documentation on labour reform in Ontario, as well as hearing from numerous concerned LBMAO members—as a matter of fact, this proposed legislation has generated more concern among our small business members than any legislation I have been privy to in my capacity over the last 20 years—it remains the position of the LBMAO that Bill 40 be rejected, notwithstanding recognition that certain concerns raised in the consultation process that followed the release of the discussion paper in November 1991 have been heard and heeded to some extent.

At the outset, the proposals contained in the original discussion paper and now in Bill 40 are based on an apparent assumption, as far as we can determine, that the workforce and the workplace in Ontario have undergone a degree of change that necessitates legislation designed to facilitate union-organizing activities which will allegedly result in improved productivity, competitiveness and relationships between employers and employees.

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What is conspicuously absent is any factual evidence of need for the proposed change, and perhaps more importantly, demand. In the latter connection, of the vast numbers of trade associations that operate in Ontario on behalf of hundreds of constituencies, not one that we are aware of has asked for increased powers for trade unions. This is significant in that associations have frequently distinguished themselves as being accurate barometers of public sentiment.

To take this a step further, it was suggested in the discussion paper that the increased numbers of part-time workers, women and visible minorities entering the workforce today require additional protection and rights through legislation. While this claim is not substantiated, this does not speak well of the Pay Equity Act, the Employment Standards Act, the Human Rights Code, the Occupational Health and Safety Act and the many other employee-oriented acts that have driven the costs of doing business beyond the limits that many small businesses can

bear, and eroded the powers, rights and profits of business operators in the process.

On the latter score, it can be argued that it is these escalating costs of doing business that are forcing employers to change the workplace profile in Ontario, particularly with regard to the influx of part-time workers and corresponding reduction in experienced full-time employees. While this may be a separate issue entirely, a commitment by the Ontario government to do its part to keep these costs in check would unquestionably minimize the domino effect that fuels the ever-increasing regulatory burden that business and industry in Ontario are being subjected to. In the process, a climate of confidence, the incentive to invest in Ontario and the enhanced ability of Ontario's business community to compete domestically and internationally would surely follow.

Paradoxically, many of the amendments contained in Bill 40, if implemented, will in our estimation limit the rights of employees rather than protect or expand them.

Let's look at a few of these proposed amendments.

First agreement arbitration 30 days after a legal strike-lockout date: This amendment flies in the face of negotiating and bargaining in good faith and with conviction. Moreover, to think that any progress on any issues that may have been made in the days leading up to the 30-day deadline would be shelved after 30 days is truly unfortunate in that there would be no guarantee that such progress would be resurrected through arbitration.

The Ontario Labour Relations Board to consider evidence of trade union membership only as of the date of application for certification: In our view, employees wishing to change their minds after that date will no longer have that right. Given the fact that a reduction to 40% in the level of support required for representation is also being proposed, workers who may have been coerced into signing a union card or who signed without full knowledge of the implications would have no recourse short of legal action.

Use of replacement workers: This amendment is most curious in that it is admitted in the discussion paper that approximately 95% of all collective agreements in Ontario are reached without recourse to strikes or lockouts. On this basis, there is obviously no need to implement such a proposal. Moreover, if an employer were not able to sustain operations onsite through the use of replacement workers as required during a lengthy strike, and if as a result he were ultimately forced out of business, ironically, the striking workers would be permanently out of a job at the company in question.

Finally, in our view, it is inappropriate to attempt to appease the sensitivities of striking workers through legislation. In fact, it is naïve to think that legislation will eliminate the emotional scars a labour dispute or strike will invariably leave.

Access to third-party property: While very few lumber and building materials retailers are situated in a shopping mall where third-party access is required, in principle it is thoroughly objectionable to think that a business owner who has nothing to do with a company that is the target of

union organizers could have his or her affairs disrupted by the said organizers.

That individual's interests and those of his or her customers must be safeguarded, and there is certainly no guarantee that restricting picketing and organizing activity to the entrances to and exits from the workplace will be adequate insurance. For many, the prospect of having to cross a picket line is sufficiently intimidating to warrant doing business elsewhere.

In these difficult economic times, very few businesses can afford to absorb any further decreases in revenue, let alone those caused by circumstances beyond their scope and control. Unfortunately, according to the Ontario Labour Relations Board powers to issue interim orders restricting such union activity if such activity is deemed necessary by the OLRB, is not very reassuring.

Grievance arbitration process dealing with all questions of fact and law: While the arbitration process can at times be lengthy, it would be inappropriate to confer powers upon arbitrators without legal credentials that rightfully are only in the domain of lawyers and judges. This could set a dangerous precedent.

Consolidation of bargaining units: We were dismayed to discover that Bill 40 now makes possible combining existing bargaining units in a chain or franchise operation with the OLRB having ultimate decision-making authority. With all due respect to the abilities of the OLRB, this clearly presents the dangerous possibility of non-compatible employees being banded together and a collective agreement being applied to different stores serving vastly different markets, economic conditions and demographics. This could create a counterproductive situation for employees, their union and the company alike and is of particular concern to the LBMAO as 50 of our retailer members have multiple locations throughout Ontario numbering in excess of 240.

Probably the most offensive aspect of the proposed reforms from our perspective is the fact that they seem geared towards facilitating easier union access to the retail sector on the supposed basis of need. In the Ontario retail lumber and building materials industry, only 11.6% of the over 14,000 full-time and 4,000 part-time employees are unionized as indicated by our 1991 survey of wages, salaries and benefits. It is our conclusion, based on the survey responses, that the low percentage of unionized employees is due to industry salary increases being competitive and keeping pace with the consumer price index and inflationary increases, and improved employee benefits packages.

In the latter connection, the survey revealed that the number of companies offering bonus packages, pension retirement plans and group insurance programs increased by 24% over the 1989 figures. As well, increases were also noted in the range of benefits offered, the number of employees eligible to receive these benefits and the percentage of the costs of those benefits borne by the company.

Lumber and building materials retailers recognize that to successfully operate in recessionary times and in an increasingly competitive industry, where consumer demand for quality service and selection has reached new heights, they have a vested interest in retaining competent

employees, developing their skills and assisting them in establishing long and fruitful careers in the industry. This reality does not need to be forced upon lumber and building materials retailers by union organizers.

The Ontario economy is starving for economic stimuli and an atmosphere that will foster improved competitiveness. Unfortunately the onslaught of legislation in Ontario has made the cost of doing business untenable and has had the opposite effect. Businesses are closing or relocating out of province, prospective investors are spending their money elsewhere and, most important, thousands of jobs are being lost in the process.

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It is our view that the proposed reform of the Ontario Labour Relations Act, if implemented, will be the biggest disincentive to investing in Ontario. It will also seriously erode the authority and ability of employers to run their businesses in a profitable and market-sensitive manner and will drive a wedge between employers and employees in the process.

In the latter connection, the traditional role of trade unions in Canadian society and, for that matter, the stated role of many major Canadian trade unions is to protect and advance the economic interests of their members. Generally this has been achieved through an adversarial approach to management. In fact numerous trade unions, including the Canadian Auto Workers, are on record as opposing any form of cooperation with management. Accordingly, the claim that changes to the Ontario Labour Relations Act will bring about improved labour-management cooperation is frankly hard to comprehend.

In conclusion, it remains the position of the LBMAO that the proposed amendments contained in Bill 40 are dramatically slanted in favour of the trade unions and would if put into law be unfairly punitive to employers. We also view the proposed increased powers of the OLRB as an infringement on the ability and enthusiasm of employers and employees to bargain in good faith. In short, the amendments make a mockery of the term "labour relations" which has always implied balance in labour-management dialogue.

Again, as was indicated at the outset, the minister has failed to demonstrate need for the proposed amendments. The references to the Quebec situation and other jurisdictions do not qualify, in our estimation. In fact evidence is contained in supporting documentation from the Ministry of Labour which strongly suggests no need whatsoever for the subject amendments.

In addition to the aforementioned assertion that approximately 95% of all collective agreements in Ontario are reached without recourse to strikes or lockouts, it was also stated in a ministry document entitled *Why Labour Law Reform?* that "Ontario is considered a good place to invest...not least because of the quality of its workforce and the stability of its industrial relations system."

Therefore, we view the proposed amendments as nothing more than change for change's sake. We also share the feeling of many that Bill 40 represents an attempt to placate the government's pro-union constituency, which was snubbed when it did its flip-flop on the Sunday shopping

issue, another issue that was very close to our hearts. If the latter is the case, then it should be noted that the lumber and building materials industry in Ontario resents being used as a pawn in a political chess game.

In closing, the LBMAO recommends that Bill 40 be scrapped on the basis that its stated purpose has not been substantiated—in this case we think the government hasn't done a very good job of telling us why these changes are necessary—and, more particularly, on the basis that Ontario is starving for investment and jobs which simply will not arise out of the bill's passage. Thank you very much.

Mr Tilson: I believe that of all the changes that are being put forward in this bill the most dangerous is the change which outlaws replacement workers during a strike of any duration. My question to you is—you are the lumber and building association—dealing specifically with your membership, can you comment on how you believe the anti-scab rule or the 60% rule will affect specifically the industry which you represent?

Ms Hancock: Ernie, would you answer that?

Mr Forsey: I think in a typical store that the association represents you have two management people: the store manager and the assistant manager. Essentially, as I understand it, given that there is a work stoppage, these are the only two employees who would be eligible to work. There's no question in our business that essentially puts us out of business. We have in a typical store the traditional run of sales clerks, labourers, truck drivers and so on. Without additional staff the business couldn't operate.

Mr Tilson: Dealing specifically with your comments that this legislation will drive employers and future investment out of Ontario, I don't know how large your association is, but can you share with the committee any specific facts to substantiate, because you're not the only organization that has made those comments.

Ms Hancock: I can give you two examples of our members, not in Metro but in rural Ontario, who have already indicated to their employees that if this legislation goes through, they plan to close their businesses, put the employees out of work and use their existing buildings as warehouses.

Mr Tilson: How many employees would that be?

Ms Hancock: Fifteen. These companies were small independents.

Mr Tilson: These communities are in the north?

Ms Hancock: In the central and eastern part of Ontario. They just feel they cannot operate, given that they would be forced to be unionized.

Mr Tilson: You made a comment with respect to the access to third party and the effect specifically on shopping malls. I'd like you to elaborate on that to some extent because I believe not only what you've said, but that the landlords or the owners of these specific third-party places could be in violation of their own leases because of other tenants claiming you're not keeping order in those malls.

Ms Hancock: No, we stated that most of our businesses are standalone units. You might be referring to hardware stores, which are not members of our association;

that would be the Canadian Retail Hardware Association. We take the viewpoint that it would be disruptive. I'm thinking of, say, a store in a large mall that had union organizers out in front of the mall so that customers could not go in. Is that what you're referring to?

Mr Tilson: Yes.

Ms Hancock: They would feel obligated not to go in and would go elsewhere. I don't think it affects our membership. Do you have any members?

Mr Forsey: No.

Ms Hancock: No, we don't have members that fall into that category.

Mr Paul Klopp (Huron): Thank you for your presentation today. My question to you is in regard to your page 7 where you talked about the good working relationship you've had with your workers. As a business person myself—I'm self-employed, but a lot of times I hire people—I've worked for people and indeed I've always been lucky enough that if people treat me right, I treat them right, and I appreciate what you're talking about.

There has been talk within this legislation that it will allow people the right to think about joining and making it easier. If you have a cooperative relationship now and your statistics prove that, what do you see in this legislation that would cause me, as a manager now or an owner of an independent, to all of a sudden change my attitude towards my workers because of these changes? What do you see in there that would make me, as a business person, all of a sudden turn my back on probably the same people I go to church with?

Ms Hancock: I defer that to my colleague Jill Kitchen of Lansing Buildall, if I might.

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Ms Kitchen: We've actually had a situation where there was a certification attempt, and it doesn't necessarily arise from a massive switch in opinion. In our business, we have a high percentage of seasonal employees: summer students who come in, short-term employees. They don't appreciate basically—and they don't share in a lot of the benefits, because of their length of service—what some of our longer-term employees do value.

So you can have a certification process come in place. No matter how pleasant your relationships are with your employers, there are always periods of disgruntlement on individual bases. Unions are very well organized, if they get a foot in the door, to promote that certification process. In our experience at our Kennedy Road store, it was the part-timers, the seasonal employees, who signed certification cards, really not understanding or appreciating what was going on.

Contrary to what the gentleman who spoke to people before us said, it was not management intervening that said all of a sudden, "No, we're going to penalize you if you participate in this certification process." It was the full-time employees who ended up hiring their own lawyers, who then said, "Hey, listen, you guys don't value what we have to offer here or what we've got here," and that's where the petition to decertify came into effect.

With that petition to decertify being removed from the act, it means there's no sober second thought. There's no chance for the employees to sit around and say, "Yes, this is what I truly do value in my operation, and no, I do not want to have a union environment here."

Also, union environments, once they come into your place, are long-term. They get transferred to several owners. It's a long-term commitment that the employee is making, and I do believe it should be an informed decision. Removing that petition will change and will improve or gain greater access to unionization where it might not necessarily be wanted by the majority.

The Chair: Thank you, Mr Fletcher, unless you want Mr Klopp to have your question.

Mr Fletcher: On page 9, you say that the Canadian Auto Workers "are on record as opposing any form of cooperation with management." I look at the investment that's been made by Chrysler in Windsor and by Ford in Oakville, where they're spending millions of dollars, and then the Oshawa plant. If I can just go to a quote from Oshawa, it said that, "This couldn't have happened without the cooperation of the Canadian Auto Workers." In other words, they could have lost every job at the Oshawa plant without their cooperation. An investment is coming in from the auto industry, and across the province there are a lot of industries that are still investing in Ontario, who feel that Ontario is a good place to be.

But do you honestly believe—and this is my question part—that if Bill 40 goes through, you will have instant unions popping up all over the place, that people are going to be browbeaten, coerced, forced to join a union? Getting back to what Mr Klopp said, if you have a good employer, is there a need for that? Do you honestly believe that is going to happen?

Ms Kitchen: I don't believe it's going to the extreme of being browbeaten and coerced. What I believe is that it might not truly represent the views of those people who have the inherent investment in working at that company—the fact that the long-term employees, because of our high percentage of seasonal workers, because of the high percentage of part-time workers who don't have the same investment, could end up in a situation of being unionized that is not what they desire. I do believe it opens that up. No, I don't believe there are going to be sledgehammers out there, or coercion.

The Chair: Thank you. Mr Offer, then Mr Cleary, in whichever order you wish.

Mr John C. Cleary (Cornwall): First I'd like to thank you for your presentation. I happen to live in eastern Ontario, and you mentioned eastern Ontario. I've had presentations made to myself by some of the local people who are in the same business you're in. We happen to be a border community there, which seems to be affecting their business. I guess my question to you is: Would the two businesses that you said might close and be warehouses if this legislation goes through be in border communities?

Ms Hancock: No.

Mr Offer: I have a question. On page 5 of your presentation, you refer to the issue of access to third-party

property. I think in your submission, and I believe in your response to Mr Tilson, you didn't believe that this was really an issue which affected—

Ms Hancock: I think we stated while very few are, we would support—

Mr Offer: Right. I'm not taking issue with that.

Ms Hancock: We don't believe third-party access would be a value to anybody.

Mr Offer: I don't want to heighten your concern with the legislation, but I'm afraid I'm going to have to do that. You're assuming the third-party property only applies to the industrial or the commercial mall setting. That certainly, I believe, was in the press releases by the ministry. However, when one reads the actual legislation, I think it is clear that it is not limited to the mall setting. It is clear that the access to third party would apply to standalone businesses. Of course I'm trying to visualize the business you're in. It is also evident that much of your inventory, the things you sell are not located within the store but are indeed located outside the store.

Ms Hancock: Yes.

Mr Offer: I'm wondering, because I have had this checked and verified by a number of individuals, if what I've said is correct—and I say that after having checked this by a number of people—and it does apply to stores which stand alone to which the public normally has access, what would be the impact to your establishments when so much of your product is on the outside?

Mr Johns: As far as I'm concerned, having spoken to a number of our members, I think we recognize that you're in fact correct. I think the point we were making in the submission was that this situation might initially tend to manifest itself more so in the mall situation than any other situation, but, yes, in conversations we've had with some of our members there is recognition of the possibility of disruption in their standalone situations, and you're quite right there.

Our operations tend to consist of a store but also significant warehouse space, some indoor, some outdoor. Given the competitive nature of the industry, if there was any kind of activity that a consumer simply would not want to deal with in terms of trying to gain access to the store or the warehouse or whatever, it's a fairly simple process to simply redirect the shopping initiative to another store down the street. That would be unfortunate and I think that's a fear we hear on an ongoing basis.

The Chair: The committee wants to thank you, Hannah Hancock, Stephen Johns, Ernie Forsey from Cashway Building Centres and Jill Kitchen from Lansing Buildall, all appearing on behalf of the Lumber and Building Materials Association of Ontario, for a well-prepared presentation. You've obviously provoked some of the members of the committee and you've generated some thought. We appreciate your taking the time to prepare this submission and to appear here. Of course Hansard has recorded your submission as well as others. You and anybody else can obtain copies of today's Hansard or any other portion of Hansard

of the committee hearings by contacting an MPP's office or the Clerk of the Legislature.

We're going to be recessing till 1:30 this afternoon. These are public hearings at Queen's Park. People watching on television can and are invited to attend here at

Queen's Park and use the facilities that are made available to visitors. They're entitled to that. We welcome them. At 1:30 there will be the Ontario Chamber of Commerce and we are recessing until then.

The committee recessed at 1209.

AFTERNOON SITTING

The committee resumed at 1330.

ONTARIO CHAMBER OF COMMERCE

The Chair: It's 1:30 and we're going to resume. The first participant this afternoon is the Ontario Chamber of Commerce, if the people with that organization would come forward and seat themselves at a microphone.

Mr Don Eastman: We're looking for the copies of our brief. The guy with it is supposed to be on his way.

The Chair: Tell us who you are, sir, and your status with the Ontario Chamber of Commerce.

Mr Eastman: I'm Don Eastman, the vice-president of policy, and with me is Wallace Kenny, chair of our employee-employer relations committee.

The Chair: We have till the hour. Please leave at least the second half of the half-hour for questions and comments.

Mr Eastman: Thank you for having us.

In our opinion, Bill 40 is the most critical piece of economic legislation this province has ever faced. The committee has the potential to dramatically and permanently alter this province's economic and social future. I'd like to think that our words and our discussion over the next half-hour have some possibility, however remote, of positively affecting the decisions that will be made.

At this point, all of us should be deeply ashamed of ourselves. We don't know whether Nero really was fiddling while Rome burned, but we've been squabbling, arguing, ranting and posturing while the people of this province have been suffering through an economic collapse unprecedented in current memory.

The government should be ashamed for bringing forward ill-considered proposals that are naïve in their economic consequences, and then turning the consultation process into a sham. Organized labour should be ashamed for driving its narrow, near-sighted, self-interest agenda forward while remaining oblivious of its impact on everyone else and even on itself longer term. The public should be ashamed for finding changes to the Labour Relations Act to be too dull, boring and complex to spend time on when it's possible to have an instant opinion on Sunday shopping and casinos. And last but not least, the business community should be ashamed for becoming part of the problem of increased rhetoric and destructive verbal warfare rather than finding a constructive way of communicating the far-reaching economic consequences of the proposed changes.

So far, the whole process of developing proposed changes to the Labour Relations Act has been an unmitigated disaster. The proposed changes and the ongoing war over those changes have been major contributing factors in the dramatic increase in Ontario's unemployment levels. It is still possible but difficult to turn this into good legislation. There are so many problem areas in the draft legislation and discussions that never took place that we do not see how it is possible to get there unless we can find some way of getting to a true consultation process.

However, within the committee modification-amendment process, there are a number of important things that can be done to dramatically improve what is currently before you. There are four areas we'll concentrate on: the right to vote, bargaining integrity, picket line violence and the right to operate.

The current Ontario Labour Relations Act is antiquated and outdated and is in serious need of reform. Right now it is possible for an employee to show up at work and discover that he or she suddenly belongs to a union—no advance notice, no opportunity to discuss the merits of unionization or the choice of unions with other employees, and no vote.

If 55% of the other employees at the workplace paid a whole dollar and signed a union card, you're unionized. It doesn't matter how badly misinformed they were when they signed the card, it doesn't matter how much peer pressure was involved and it doesn't matter how late at night or how many drinks were consumed. If 55% of the other employees at the workplace signed union cards, you're forcibly unionized.

Today it is possible to stop the automatic certification process. To get a democratic vote, you have to get a sufficient number of card signees to recant from their earlier membership decision through a petition process, a difficult and painful procedure. But only then can you be assured that the unionization decision reflects the true wishes of your fellow employees as exercised in the sober, unpressured environment of a secret ballot.

There are two important issues at stake here: (1) Automatic certification is an abuse of personal rights. (2) The current process poisons the employee-employer relations environment at a time when mutual understanding and co-operation are critical, just in advance of first-contract negotiations.

Rightly or wrongly, most of the business community views the unionization process with alarm. In many instances, the employer sees certification as a personal defeat or insult. The first natural human response is, "It can't be so." The current legislation encourages employers to believe that if the employees had only had the chance to express themselves in a secret ballot, a majority of them would vote against unionization. Even if that is an exercise in self-delusion, it's a widespread perception.

Think about what that means for the negotiation of a first contract: an employer who fervently believes the union sitting across the table really doesn't represent the true intentions of the employees. Little wonder that first-contract negotiations are so difficult. Change the legislation so that it requires a secret ballot prior to any union certification. It solves most of the human rights problems. First-contract negotiation problems won't disappear, but the environment for them would be substantially enhanced.

The legislation before you actually makes these problems worse. The right to petition is severely curtailed. Once the union has applied for certification and the employees are informed of the application, the admission of petitions is

prohibited. Catch-22: Once you find out about the certification application, it's illegal to petition to require a vote. Incredible.

The requirement for the token \$1 membership fee is dropped. Even that short pause to help an employee consider the implications of signing the union card is eliminated. Automatic certification with 55% signed membership cards stands. Threshold support to require a vote is dropped from 45% to 40%.

We have no problem with dropping the support required for a vote from 45% to 40%, but maintaining the automatic certification process is retrograde and irresponsible. Please require a vote. If this legislation is to have even the remotest claim of being a positive reform of the existing Ontario Labour Relations Act, it has to find this simple, positive solution for some serious ongoing problems.

Having compounded the first-contract negotiation problems by extending automatic certification, Bill 40 solves the first-contract problem by providing relatively immediate and unjustified unilateral access to arbitration. Having trouble coming to a settlement? Not to worry; no need to bargain seriously in good faith. Just wait 30 days and then ask the government to hand you a contract through its arbitration process. One of the laws of legislation is that legislation that can be abused, will be abused. This is one of several provisions of Bill 40 that invite abuse.

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If you really believe in collective bargaining, access to arbitration should only be possible as an avenue of last resort, where it's clearly demonstrable that the other party has not been bargaining in good faith. Limit the access to arbitration.

Our largest single concern is the proposal to make it illegal in most circumstances to replace workers who have gone on strike. There was some minor modification and window dressing between the white paper and Bill 40, but for most businesses and for all practical purposes Bill 40 would make it illegal to replace workers who have gone on strike. The stated reason for this provision is to reduce picket line violence, but the provision represents a massive shift of power that has far-reaching implications for the entire provincial economy.

During the consultation process, we tried to express our concerns about this shift in power and how it would affect job opportunities in the province. The minister and his staff were adamant that any shift in power was minuscule. Their only concern was reducing picket line violence.

If that really is the concern, there is a much simpler solution that does not put jobs and the economy at risk. Picket lines are legally entitled not to obstruct, not to intimidate, but to inform. Picket line emotions are such that striking workers find it difficult to confine themselves to legal activities.

The Stelco strike of two years ago was marred by a number of ugly incidents. They arose not from the use of replacement workers but from the company's attempt to ship steel from remote warehouses. This was steel that the striking employees had already been paid for producing.

The union members felt they had the right to use the picket line to prevent the company from selling the steel.

Our legal system has turned a blind eye on the use of the picket line to obstruct and intimidate. If you want to eliminate picket line violence, enforce the existing legislation. If unions and their members are unable or unwilling to observe and respect the law, then perhaps we need to have a long, hard look at the picket line.

We need to somehow eliminate what has become a sordid perceived entitlement to obstruct and intimidate, unless, of course, violence isn't what the real problem is here.

Nothing has so frustrated us in our attempts to have a positive discussion about changes to the Labour Relations Act as the mental stone wall we have encountered whenever we have attempted to discuss the unintended economic consequences of a ban on replacement workers. We truly have trouble believing that it is possible for so many people in the union movement and in the government to be so stunned about the massive transfer of power to the union movement inherent in the ban on replacement workers.

We have been continually told that banning replacement workers will make little economic difference, because they are seldom used; 95% of contract negotiations are settled without a strike.

Why not solve all the problems? Just make strikes illegal, because the prospect of the economic damage from a strike has a substantial impact on the final contract even in the majority of the cases where it is never used. It seems to us that those who wish to ban replacement workers are acutely aware that the risk of a strike is an important tool in negotiations.

The right to strike gives the union a substantial capability to inflict economic damage on a company. A ban on replacement workers dramatically escalates that power. It gives unions the capability to bankrupt any Ontario-based business virtually at will.

Why the apparent inability to recognize that a ban on replacement workers will also affect all negotiations, not just those where a negotiation breakdown leads to a strike and ultimately to the use of replacement workers?

Is it possible that the problem isn't an inability to understand, but a deliberate, calculated deception? The real purpose of the ban on replacement workers is to transfer power to the unions and use picket line violence as a smokescreen to get it through. If that is in fact what's happening, it's truly despicable.

We sincerely hope that it is only the paranoia induced by the current situation leading us to see winks and nudges that really aren't there. But it is hard to find other explanations, rational or otherwise, that explain why it has been impossible to get this government or union leaders to understand the business community's concerns about the proposed legislation. I share those observations with you not to accuse but to help you understand the frustration we feel.

Fact: Banning replacement workers does dramatically shift the power to unions. Even for those who may happen to believe that transfer in power is appropriate, it is clear that it has extremely far-reaching economic implications,

implications that desperately need to be discussed, understood and considered before we proceed with this extremely dangerous provision. To this point, that discussion has not been permitted to take place, as the government has hidden behind the picket line violence bogeyman. The people of this province deserve better.

Much has been said of Quebec. Quebec has had legislation since 1978 banning replacement workers. From 1970 to 1977, Ontario had 46 more strikes than Quebec. Since Quebec's legislation, from 1978 to 1991, Quebec has had 652 more strikes than Ontario. Quebec has also had substantially higher unemployment since its legislation than it had in the previous 10 years. While Ontario's unemployment rose one and a half percentage points, Quebec's rose two and a half percentage points. Is all of that increase due to their labour legislation? Probably not. Certainly some of it is.

Quebec's economy is resource-based. Regardless of how bad their legislation is, companies can't pick up the trees, mines and hydro power and move out. Ontario's economy is much more vulnerable. Its core is based on manufacturing and tradable services that are relatively mobile and have to be competitive on a global basis.

If Quebec's permanent increase in unemployment was one percentage point, what do you think it may be in Ontario? Each percentage point means 50,000 jobs, and it's not just the number of people but the quality of jobs that is at stake. The ban on replacement workers would hit hardest at the companies and jobs that we most want to have: Canadian-owned single plant operations, world product mandates and highly capitalized high-tech jobs. Our relatively small locally owned and managed companies would be particularly at risk.

Ontario currently faces a major challenge in the area of social welfare. In order for social welfare reform to work, there have to be job opportunities to move as many people as possible into self-dependence. High unemployment constitutes a continuing barrier to those currently trapped in the welfare system.

Partially fixing the replacement worker provisions so that they are passable for large multinational companies while ignoring the legitimate concerns, needs and fears of the smaller businesses that are the backbone of this province's economy simply isn't good enough. If you fix everything else but leave Bill 40's ban on replacement workers intact, this legislation will still be a disaster.

Time is getting short. Is it possible to get the substantive changes this bill requires? For the good of all of the people of this province, how do we get there?

The Ontario Chamber of Commerce is not just willing but anxious to help in any way we can to be part of a process to reach positive changes to this proposed legislation. Thank you for your time and consideration.

The Chair: Thank you, sir. Four minutes per caucus.

Ms Murdock: Thank you for making your presentation. I just want to go back to the first part of your presentation, because we've heard it quite frequently from groups other than the chamber in terms of the timing of the legislation.

When one considers that the three fastest-growing jurisdictions during the 1980s, when times were good and money was free-flowing, more or less, were Ontario, Massachusetts and Florida, yet in 1990 those same three jurisdictions were also the ones that showed the fastest business loss, or companies that closed during that same period, that's long before this legislation was even thought of or long before anyone even thought there would be a New Democratic government in Ontario.

I'd like you to explain, or give your opinion. I'm wondering, in terms of investments—because that's basically the fear that has been raised, that investment is going to be lost if this legislation is put through—how that jibes with companies like Crayola crayons, which opted to choose Lindsay, Ontario, rather than Pennsylvania or Kansas when it has its own operations in the United States yet chose Ontario to increase its operations in terms of selling 4 million packages of crayons. I mean, we can all identify with that.

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Mr Eastman: Let me be careful. I do not want to overstate the implications of the act. I think they are immense, but let's be careful we don't overstate them.

The act, if passed, will not mean that suddenly the day after it's passed every business in the province will shut down. It will not mean that the day after it is passed there will never be another dollar spent in the province. What will happen will be that the province will see less investment than it would have had otherwise and fewer jobs than it would have had otherwise.

On one of the graphs that's attached—I think that paper finally came round there—if you look at Ontario's unemployment experience relative to that of the other areas of this country since the fall of 1990 when this legislation became a risk, there is a very clear message there about what this legislation means for potential investment in the province.

Ms Murdock: Could you say the last part over again? I'm sorry.

Mr Eastman: There is a very clear message there of what this legislation means for future investment in the province. It won't mean that it's all going to disappear, but it will mean that there'll be less of it than there would have been otherwise.

Mr Wallace Kenny: I take it that you would disagree that there's going to be less investment in the province as a result of this.

Ms Murdock: I'm having some difficulty with it. If in times of recession, such as we are experiencing—and everyone is agreeing this is a bad time and has been for the last year or so—despite the fact that we have been in recession, companies in other jurisdictions, as well as our own companies in the province, have invested, albeit maybe not to the same degree as they would in good times, but they have been investing. They haven't pulled out. There have been major losses in the manufacturing sector, I'm not disputing that, but I would say, in own view, it would come not as a result of the labour reform legislation but as a function of other things.

Mr Kenny: It hasn't been passed yet.

Ms Murdoch: Yes, it's not law.

Mr Kenny: What we're dealing with here, hopefully, is attempting to identify the problems if the legislation is passed, and one of the problems we're attempting to identify is the loss of investment in the province. It's not what's happened now, it's what's going to happen in the future which is of concern to us.

Business compares jurisdictions from one province to one state to the next as to whether or not it's a favourable climate to invest in. We are in competition with other provinces and states. There's no debate about that, that's a reality, and it is a reality that business will look less favourably upon the province of Ontario if this legislation is passed. That is fact. I mean, it's not really something that one should debate. It's a question of whether you want to put up with that, whether you think the costs are worth the legislation. That's something we can debate, but you shouldn't debate the fact that you're going to lose jobs; you are.

Mr Offer: You brought forward some important areas in your presentation. If possible, I'd like to ask you a question on an area that wasn't brought forward in your submission, and if there's no position on it, then I'll go on to another area, if time permits.

It has to do with the issue surrounding the ability to picket and organize on third-party or private property. It's not in your presentation. I know, as we all know, that the Ontario chamber is made up of a number of businesses located in industrial malls and shopping malls, a lot of small businesses. I'm wondering if there is a position the chamber has taken on the issue of picketing and organizing on private property.

Mr Kenny: Yes. We have taken the position that we don't think we should extend it to the extent that has been suggested in the legislation. I'll give you an example. A department store licenses out a variety of its departments to other owners: a hair salon, for example, in the middle of a department store. The way the legislation is drafted, you would have picketing if that hair salon was unionized. You would have picketing in the department store, outside the entrance to the workers' workplace.

This is not just outside in public areas. The way the legislation is drafted, you are inviting people to organize and picket within other people's premises. There are severe problems associated with the way in which the bill is drafted because of the way in which business is organized in those kinds of settings.

Mr Offer: On that same issue, if time permits, there are those who would have us believe that provision of third-party picketing is limited only to the industrial mall or the commercial mall. I'm hearing clearly from what you're saying that the wording of the legislation is much broader in its scope.

Mr Kenny: There's no limit. That's an example, but the legislation certainly doesn't limit itself to that at all.

Mr Offer: One short question in the area of the secret ballot. That's an area obviously you have touched upon, as have others. Clearly you're in favour of the ballot. Have

you directed your mind on this issue to the percentage before a secret ballot is called? I think it's assumed by a number of people that for a secret ballot or full and open disclosure for a worker to choose one way or the other in terms of joining a union, the qualifications would be the same, 40% or 55%. Have you directed your mind as to whether there should be any lowering of that percentage required?

Mr Kenny: I'm not sure I quite understand the question.

Mr Offer: What would be the trigger point before a secret ballot would be called?

Mr Kenny: We have no objection to the lowering to 40%. We think that's quite fair and quite legitimate. What we think is fair and legitimate is that there be a vote so that people have the right to consider these issues in a fair and open manner, which is the way we choose our government and any other form of organization that is going to represent us. We're really quite surprised that there's opposition to that concept.

Mr Tilson: Continuing with the issue of the voting process, you commented, on pages 2 and 3 of your report, on your concern with the fact that a potential member no longer will have the right to change his mind and opt out of the organizing drive. Essentially, the petition process is now gone and you deal with that.

I asked one of the union groups this morning what their thoughts were about the democratic process of it and their answer was essentially the answer that has been given by a number of unions. In fact, one is quoted in the Financial Post this morning. It states that what should concern Ontarians is that this legislation presumes such a low level of intelligence on the part of workers that their rights are needlessly diminished in favour of the rights of trade unions.

That answer was given to me this morning when I posed that question. So I pose that question to you and ask for your thoughts. I would like you to comment on this standard question that seems to be coming forward by the unions and the NDP.

Mr Eastman: Let me comment first. I think one of the major advances in democracy was the development of the secret ballot that permitted people to express their opinions without having outside pressure on them. I really don't understand why it is so difficult to have that concept extended to the choice of a union.

1400

Mr Tilson: I don't either, but we obviously know why. I find the answer preposterous, quite frankly, but I'd like to hear—

Mr Kenny: What the unions say in that regard is exactly what the bill does now. It treats people as if they are not able to—and I don't say the bill; the existing act.

Mr Tilson: No, that's not true. You're right, at the outset, but they then have the right to petition, to go through a petition process to change their minds. That is gone now.

Mr Kenny: Yes, quite right.

Mr Tilson: That's the important part. Now you wake up and you find a union and you have the right to petition

that you've changed your mind; you realize what you're getting into. With this new legislation, you wake up and you find that a union is organized. Tough luck: That's what this new legislation is saying.

Mr Kenny: Yes, quite right. But the whole petition process is necessary in the existing act because there isn't a right to vote. If what you had was an application process and then a right to vote in all cases, you don't need petitions because people get to express their points of view like everybody else does in a secret ballot circumstance. The reason petitions are being eliminated is because they're time-consuming in terms of a certification process. You have many days of hearings to find out whether the petition is legitimate or not. You can eliminate petitions by having a vote in every case. That means you have labour relations promptly and you have a decision-making process promptly which is fair to everybody in the workplace.

Mr Tilson: One second area I'd like to pursue is a question that I think Ms Murdock raised, and that had to do with the subject of investment. The standard answer that seems to be coming forward from the NDP and the unions is a quote that was again given by Mr Mackenzie this morning and talks about the number of companies that have increased. I think it was 106 companies have increased. They're going to invest over \$5 million in Ontario and that's just since January. So he and Ms Murdock simply disagree with you. They say that everything's fine in the province of Ontario and investment is just fine. Can you tell us your thoughts on those comments?

Mr Eastman: If that were really true, Ontario would have a much lower unemployment problem than it does currently. Simply, a lot of people are deciding they will invest elsewhere while there is uncertainty surrounding this legislation or wait until they see what happens before they decide what their investment intentions will be.

The Chair: Mr Eastman, Mr Kenny, the committee thanks you and the Ontario Chamber of Commerce for your submissions, for your participation in the process. We trust you'll be keeping in touch and monitoring the development of the hearings. Thank you very much for coming here this afternoon. Take care, gentlemen.

AMALGAMATED TRANSIT UNION,
CANADIAN COUNCIL—ONTARIO DIVISION

The Chair: The next participant is the Amalgamated Transit Union, Canadian Council—Ontario Division. Gentlemen, please seat yourselves in front of a mike and tell us who you are, what your positions or titles are and try to leave the second half of the half-hour for questions and dialogue.

Mr Ken Foster: My name is Ken Foster. I'm the executive secretary of the Amalgamated Transit Union, Canadian Council.

Mr Wally Majesky: My name is Wally Majesky, a consultant who does work with the Amalgamated Transit Union.

Mr Foster: Mr Chairman, I want to take this opportunity to thank you for the opportunity to participate in this

hearing and hopefully make our views known in regard to the amendments to the Labour Relations Act.

Our union represents 17,000 unionized public transit workers in Ontario, where a sizeable portion of these members work at public transit systems or in intracity transportation systems such as the Toronto Transit Commission, OC Transpo, Transit Windsor, and that's just to name a few. We also have members involved in providing public transportation in an intercity context, for example, GO Transit, Gray Coach, Greyhound and Trentway Wagar.

Without question, our industry is very much reliant upon good, progressive labour legislation, which we hope will potentially foster good, sound labour-management relations. We can honestly say that in many instances we have what we could call a good, solid working relationship with our management counterparts.

It is fairly obvious there are many areas that cause us great concern, ranging from harassing potential union organizing drives to the use of supervisory personnel during strikes, which we will elaborate on further in our brief.

Clearly, this whole issue has gone through a lengthy consultative process and we are now entering into the final phase of this exercise. We are not totally convinced that this process should have taken this long, but be that as it may, the proposed legislation is now drafted. Furthermore, the sooner it is approved, the better, and hopefully the government will take into account the concerns raised by our union.

We would like to commend the Ontario government for introducing these much needed amendments and changes to the Labour Relations Act. We think they are long overdue and will, in the long run, improve the overall climate of collective bargaining.

Having said that, we want to go on record as saying that the changes are by no means too extensive or far-reaching. In fact, they do not meet all the concerns of the labour movement. However, we still are convinced that this is a first good step. Hopefully, we can expect some other changes when this whole process is looked into again at some future date.

Since we are discussing the proposed changes to the Labour Relations Act, we would like to comment on how these proposed changes are being viewed and ultimately characterized by the business community. There presently exists a certain paranoia within business circles, which believe the proposed labour amendments will, virtually overnight, turn the Ontario workforce into a totally unionized environment. This, they predict, will happen as a result of these proposed changes.

Let us dispel this myth once and for all. These proposed changes, which we consider quite moderate and fairly minimal, will not accomplish what the business community is alleging; for example, everybody in the workforce will literally become unionized in one fell swoop. I would like to certainly support the business community if it thinks this is true, and we hope it's right in that case. This is anti-labour business rhetoric in its purest form and should be viewed in the context of how these changes are being portrayed by these so-called business lobbying

coalitions as they try to stir up public discontent for their campaign.

Secondly, let's be very honest and look at how these proposed labour amendments are being characterized by the business community and, to a lesser extent, the two opposition parties. The business community warns that these amendments, if implemented, will create a negative environment for businessmen and investors alike, which will force the business communities to leave Ontario in droves.

Let us put this argument to rest, once and for all. If the Ford Motor Co can invest \$2 billion in Ontario at the present time—and also, as we all know, Chrysler Canada is starting a new production line in Bramalea. When you look at General Motors expanding its work in Oshawa, and now we find out that Ford Motor Co as well in Essex has gone and invested more money, how can the business community say this? It's totally amazing to us.

Clearly, if there is any substantial loss of jobs and investment, we would argue that this displacement of business activity is due in large part to the Canada-USA free trade agreement, as opposed to the proposed changes to the Labour Relations Act.

Lastly, these proposed changes to the Labour Relations Act are being labelled as "revolutionary." However, in reality these proposed amendments to the Labour Relations Act are very similar to what already exists in other Canadian jurisdictions, namely, the province of Quebec. For the record, the financial wellbeing of Quebec has not been impaired or hurt, nor have businesses left Quebec in droves in any way as a result of its current labour relations legislation. We keep hearing comments about how the unemployment rate has risen in Quebec. How can you relate that to the changes in the labour legislation? I think we all know where that comes from. Again, we feel it's the free trade agreement that's been doing most of it.

This is just another example of the scare tactics incorporated in the media campaign being carried out by the business community in this province. If they had their way, they would set back business-labour relations to what they were in the Dirty Thirties and take us back to the days of child labour. More accurately put, they would like to see a labour climate on a par with the Sunbelt states in the US, where wages and social benefits are literally the worst in North America.

In addition, the word on the street is that the international public relations firm Hill and Knowlton, which is known for its ability to bend public opinion on certain issues and which was retained by the Bush administration to sell the US-Iraqi war, has been conspicuous in its involvement with certain business coalitions. We ask, why has this been necessary?

1410

We think we should set the public record straight before we comment on specific changes in the Labour Relations Act.

Unfair labour practice and certification organizing: We would like to comment on these two proposed changes, and in particular the unfair labour practices section where we have had personal experience in organizing. One was

with Penetang-Midland Coach Lines and the other one was with the airline limousine drivers at Pearson International Airport.

In these cases, the employees in both of these union-organizing drives were systematically harassed, threatened and intimidated. In some instances, specific people involved in the organizing drive were actually fired. These employers used every method available, such as surveillance, interrogation of employees etc and, even worse, the employers even preyed on the ethnic culture of some East Indian employees to dissuade them from joining the union. Thus, in light of these experiences, we strongly support the proposed amendments to the Labour Relations Act.

The use of scabs: The ATU considers this to be the cornerstone or literally the key part of these proposed amendments to the Labour Relations Act and we therefore totally and unequivocally support this specific amendment. Ironically, our support does not necessarily stem from the case of scabs in the transportation industry in Ontario. Instead, it stems from other experiences our union has had with notoriously anti-union companies such as Greyhound Lines, which thrive on trying to break strikes and, in turn, our union.

We welcome the amendment in subsection 73.1(6), which prohibits an employer, after notice is given to bargain or bargaining has begun, whichever earlier, from transferring workers, supervisors or other persons from another location into a shared location.

We welcome this change because we have had instances in our largest bargaining unit at the Toronto Transit Commission where management personnel, for example, inspectors, were utilized to man the subway system, thus creating a very hostile and unfriendly labour relations environment. The reason we bring this to the attention of the committee is that management wants it both ways; for example, they want their managers to act as strikebreakers.

On the other hand, when the union takes internal action by having these union members fined or, in this particular incident, expelled from the union, management then takes the attitude or alternatively goes to arbitration and agrees that middle management personnel like TTC inspectors should be allowed to work during the strike and in fact do the work of striking bus drivers but be immune from any union discipline of any sort.

However, this proposed amendment to the Labour Relations Act would go a long way in eliminating these types of anti-union practices, but particularly the use of supervisory replacement workers. Consequently, our approach is tempered by the subtle change the government is also advocating, and that is the change that says non-bargaining unit employees or supervisors who normally work at a struck location will be able to perform the work of striking employees.

This amendment, in our opinion, is flawed because we think that, in essence, this change to a large extent negates subsection 73.1(6). Thus, we refer to this proposal as a two-step dance in that it's two steps forward and one step backwards. In the final analysis and in many instances, this subtle change would do little to improve labour relations or shorten the length or duration of strikes.

The grievance arbitration process: The issue that is of great concern to us is the proposal to change the deemed arbitration from a tripartite panel to a single arbitrator unless specified or contained in an arbitration clause in a collective agreement.

Before we set our concerns, we want to be crystal clear what our position is. We do not want any changes to the deemed arbitration subsection 45(2) as proposed by the Ministry of Labour.

Our reasons simply are that the current system, though not totally perfect, provides for the maximum flexibility and opportunities for a union to get a fair and expedient hearing through the current tripartite arbitration process. Therefore, we want the present system maintained because it gives the flexibility to use either single arbitrators, should the occasion warrant, or we can use the tripartite board, should the circumstance warrant.

In fact, the Amalgamated Transit Union is not convinced in the slightest that tripartite boards are the cause of considerable delay and added expense to the arbitration process. As a matter of fact, we agree with some labour experts such as Clive Ballentine, a long-standing member of the Ontario Labour Relations Board, who says: "One of the greatest delays in the arbitration process are lawyers who, by the very nature of their profession, cause delays by requesting and agreeing to adjournments, arguing preliminary objections, introducing needless and repetitive evidence, and in some instances, coming to a hearing being improperly prepared to argue the case."

Furthermore, we also have some other arguments, and these are direct quotes from arbitrators that serve as chairpersons of tripartite boards on many ATU arbitration cases.

"There are very specific situations where experienced nominees (sidepersons) have been instrumental in ensuring that the final award reflected the specific needs of the parties, given the nature of the sector."

The most compelling reason, however, is the ability of the board of arbitration, through labour-management nominees, to encourage settlements, and there is consensus that settlements arrived at by the parties are infinitely preferable to the arbitrated settlement. There is a rule-of-thumb analysis that states that when you have intervention by the sidepersons, nominees, the rates of settlement are far in excess of 60%. By comparison, because of the legal difficulties of single arbitrators getting intimately involved in the mediation process, the settlement rate is less than 25%. Therefore, it's fair to say that settlements save the parties more money than the cost of nominees.

In ending, the ATU cannot comprehend why this whole question of single arbitrators, as opposed to tripartite boards, is considered such an important issue by the Ministry of Labour. We are hard pressed to see why this is on the political agenda. Clearly, in the scheme of things, we would argue that this is really not relevant or even important considering the scope of labour amendments being proposed. Thus, we would strongly urge the government to note our concerns on this issue and not change the deemed arbitration clause in subsection 45(2).

In summation, we have highlighted some issues which are of concern to us. Clearly, we support the Ontario Fed-

eration of Labour's position on virtually everything it is advocating, with the exception of subsection 45(2), the deemed arbitration clause that supports single arbitrators versus tripartite boards.

We think that these proposed changes are good fundamental changes that will go a long way in establishing good labour-management relations in the province. We also commend the provincial government for bringing forth these changes which, to us, are long overdue. We can only hope that the proposed Labour Relations Act amendments receive speedy approval when the House reconvenes in the fall of this year.

The Chair: Thank you, sir. Mr Offer, five minutes please.

Mr Offer: I was listening very carefully to your presentation. I might want to ask you this question in the area of organizing. Forgive me for being repetitive in some of these questions, but I think it's important that we do get the perspective of many of the deputants that come before the committee.

There have been suggestions that the organizing, whether or not to join a union, could be enhanced if there were a secret ballot. Right now, under the current legislation, certainly we know about the aspects of the bill where the \$1 membership fee has been taken away, where the criterion for a vote has been reduced from 45% to 40%, where automatic certification has remained at 55%.

There has been an underlying concern of people coming before the committee that this could all be enhanced if there was free and open information given to workers as to the benefits of joining a union, where there would be the opportunity for the employers to provide their position on organizing and where, as a result of that, there would be the opportunity for the workers to cast their votes in a secret ballot on the basis of the information that they've heard in order to finally determine whether they wish to be part of a union and, as I've heard outside of the committee, that this type of vote should take place within the premises of the employer.

I'm wondering if you can share with me your thoughts on this. This isn't an issue as to the right to associate, which is given, or the right to join a union, which is given; this is based on the premise of the right of a worker to be fully informed and to freely cast his vote in a secret manner.

Mr Foster: I'm certainly not going to speak on behalf of any other unions; they certainly have their opinions on it. My opinion, and certainly I represent our members, is that when it comes down to an organizing drive, and you say let the members have the right to a secret ballot, at what point do you offer that to the employees?

If that's the case, then why have an organizing drive at all? Why not just have one meeting and have both labour and management sit at the head table and field questions from the employees and hopefully at that point in time future members? After those two parties have heard this, then let's take our chances on a vote. But at this particular time I don't think management would want to take that chance. I'd certainly like to hear their comment on that one.

1420

Mr Tilson: But the unions take that chance.

Mr Foster: Like I say, I'm not going to comment on other unions. I would take that chance, based on the comments I've heard from people we've tried to organize. I'm very confident we'd win.

Mr Majesky: I'd like to comment, especially to Mr David Turnbull, who is a great fan of mine, I'm sure. There's a concept out there that democracy reigns supreme in the workforce. The fact of the matter is that management isn't interested in democracy. I have had experiences where management will intimidate, fire people and sit there in front of an organizing drive, especially with newly arrived immigrants in this country who are very scared of authority. So I'm really taken aback by this superdemocratic attitude of the business community, as if it's really interested in superdemocracy for minority shareholders when it makes political donations to political parties in this country arbitrarily. This is a lot of baloney.

The fact of the matter is this person represents a union. He said very clearly he's quite willing for management and labour to make their pitch and may the best person win, but the fact of the matter is management doesn't play by those rules. These people will exert any kind of pressure to intimidate, fire or cajole. To listen to the chamber of commerce in its high and mighty tones talk about democracy, that's a lot of baloney. The chamber of commerce isn't interested in democracy; it's interested in protecting its vested interest.

When they talk about how investment in this country is going to be put aside by the labour relations legislation, they're living in a world of Technicolor. There have been 500,000 jobs lost in this province. That has nothing to do with labour relations. It has a hell of a lot more to do with the free trade agreement and there's going to be a hell of a lot more when we sign a free trade agreement with Mexico. Quite frankly, I think the Labour Relations Act pales in comparison to what the hell's going to happen somewhere down the line. So I get a little tired of all this democracy. It makes me a little sick, because they don't believe in democracy.

Mr Tilson: I was going to ask a question, but I yield the floor to Mr Turnbull.

Mr Turnbull: He mentioned my name. I've never met the gentleman.

Mr Majesky: Since you mentioned mine in the House, I thought it was only apropos to mention yours in the select committee.

Mr Turnbull: Oh, this must be Mr Majesky. Oh, wonderful.

Mr Majesky: Who'd you think it was? Bob White?

Mr Turnbull: I didn't know. You're not on the list. Okay, now we'll have some fun. Let's first of all put to bed the rubbish about free trade. The fact is Ontario has sold more to the United States since free trade than before it.

Mr Majesky: And more jobs?

Mr Turnbull: There are jobs being lost throughout the world, Mr Majesky.

Mr Majesky: Show me the figures on jobs where we gained them.

Mr Turnbull: Mr Majesky, let me speak and then I will let you speak.

Mr Majesky: This is a free forum. I don't have to observe parliamentary procedure.

Mr Turnbull: You may not want to respect the politenesses.

Mr Majesky: You weren't that polite in the names you called me so I don't have to be that polite in what I call you either.

Mr Turnbull: Fair enough. We know that it's rubbish with respect to free trade because there's more being exported to the US today than there has ever been in history, but I just want to ask you about—

Mr Majesky: How many jobs have we gained?

Mr Turnbull: There are jobs being lost throughout the world.

Mr Majesky: Put the figure forward. You can't prove that.

Mr Turnbull: By the same token, 300,000 jobs are going to be lost as a result of this legislation.

Mr Majesky: It's not in place. We've lost the jobs under the free trade agreement now.

Mr Turnbull: That's rubbish.

Mr Majesky: That's your vision of the world, Mr Turnbull.

Mr Turnbull: We are selling more to the US than we have in history. It doesn't sit very well with your political cronies but it's fact.

Mr Majesky: That's why all my neighbours are out of work.

Mr Turnbull: Tell me something about a presentation that we had last night from the Christian Labour Association of Canada. The last sentence of their presentation was, "One positive step in that direction would be to restore unions as voluntary organizations and prohibit the practice of compulsory union membership." I'd be interested to see how you respond to that. You talked a good deal about democracy. Now tell us how democracy fits with being forced to be in a union and being forced to have part of your dues sent to the NDP coffers even when you don't want it.

Mr Majesky: Look—

Mr Foster: Can I just—

Mr Majesky: You go ahead, Kenny.

Mr Foster: Let me just answer that.

Mr Majesky: He would know what it's like anyway.

Mr Foster: Again I cannot comment on what other unions do with their dues. If you're referring to this union, I will make no hesitation in saying that we have locals that are directly affiliated to the New Democratic Party. There's no question about it, and I might say we're proud of it. But also in that particular scene there is access to any member in our union—and I can prove this—who does not want to

contribute his dues to any political party whatsoever. We have access for that. Don't say that it's mandatory.

Mr Turnbull: What happens to that money? Can it be directed to other parties?

Mr Foster: If the membership so desires, yes.

Mr Turnbull: Can individuals say: "I don't want it to go to the NDP. I want it to go to the Conservatives or the Liberal Party"?

Mr Foster: I just said yes, they can.

Mr Turnbull: Individuals?

Mr Foster: Yes.

Mr Turnbull: Good. Last year during the TTC strike, I remember members desperately wanting to be sent back to work, shouting at the Conservative bus that we ran up and down Yonge Street as a courtesy bus, "Tell Bob Rae to get us back to work." They wanted legislation. Does it not seem appropriate that we have mandatory secret ballots on everything with respect to strikes and everything to do with unions?

Mr Foster: Just in comment to that, I suppose, in regard to the TTC, our local there is the largest local we have in Canada and runs around 9,000 members. Do you think the majority of people who were yelling at this Conservative bus to get them back to work represented 4,500 of those members?

Mr Turnbull: All the people who were standing outside the TTC headquarters were urging us to go down and tell Bob Rae to get them back to work. They weren't exercised with us.

Mr Foster: If the majority voted or directed our executive board to settle the agreement, then our people would have settled the agreement, but obviously those people who yelled at the Tory buses were not the majority.

Mr Turnbull: They were asking us.

Mr Foster: But they were not the majority; far from the majority.

Mr Turnbull: It was everybody standing outside the headquarters.

Mr Foster: You don't get 4,500 people in front of their headquarters.

Mr Turnbull: They were on the picket line and they didn't want to be on the picket line.

Mr Foster: I know—

Mr Turnbull: Let me ask a question to Mr Majesky. Do you think it appropriate that we have legislation going through where the minister refuses to do an impact study as to how many jobs can be lost by this and denies the validity of any other study done by other outside agencies, refuses to do it and yet is spending money on paying you \$165,000 for a study about which the Ministry of Transportation, when it saw the first proposal, said: "We don't need it. We've already got the figures"? Then they changed the study to be able to pay you.

Mr Majesky: The fact of the matter is that I'm not going to comment on the study. I think the thing was brought up in the House and was dealt with in the House.

Unfortunately you didn't get your way and you'll have to wait for another day.

On the question of the Minister of Labour, these changes—

Mr Turnbull: Yes, it's called the next government.

Mr Majesky: Look, when I'm speaking—you asked a question. I'm going to give you an answer. This is the way it works in the House. I don't know how the hell you people operate. You asked a question and I'm going to give you an answer.

The fact of the matter is that I don't think there's been any kind of impact studies. These are fair and reasonable propositions. They've been done around the world.

Mr Turnbull: According to you.

Mr Majesky: According to me and a lot of other people, and if you don't happen to like it, that's too bad.

Mr Turnbull: According to the union leadership.

Mr Majesky: That's exactly what I am, and I happen to be a labour consultant. If you don't like the answer, then so be it. That's tough luck. I don't think it's going to hurt the country. I don't think it's going to hurt Ontario.

Mr Turnbull: The average Ontarian doesn't agree with you.

Mr Majesky: The sum total of the present labour legislation was brought in by your government under Bill Davis.

Mr Turnbull: That's right, the most progressive legislation in Canada.

Mr Majesky: That's right, at that time. I have always publicly admitted it, long before the southern states and whatever. This is just an extension of that and is taken one step further. I don't see any kind of need for people to panic. It won't have a flight of investment from this province. It will do nothing. It will only improve labour-management relations in this province.

1430

Mr Turnbull: Would it not be reasonable to prove that out?

Mr Majesky: Three years from now, you and I will meet somewhere and we'll hash it out over hamburgers on O'Connor or wherever you want and we'll see which one of us is right.

Mr Turnbull: That sounds reasonable.

The Chair: Mr Wood, briefly, please.

Mr Wood: Thank you very much for coming forward. It was an excellent presentation towards—

Mr Majesky: Len, don't say that. He'll say you're biased.

Mr Wood: Nice to see you again, Wally. I haven't seen you for quite some time.

Mr Majesky: Make it on a first-name basis, eh?

Mr Wood: Major changes have taken place in the workforce—the number of additional women who have gone into the workforce, the number of part-time workers who have come forward—some of them as a result of the free trade agreement that was pushed down the throats of

the people of Canada and put people off into that. I am wondering what effect that has on your union. Do you have a lot more women in the workforce as bus drivers, for example, or part-time workers in either your organization or the union, or that you've seen around the area?

Mr Majesky: Don't mention the part-time worker thing too loud, because that's still a sore issue right now. In so far as the number of women in the workplace in the transit industry is concerned, it is still relatively very low. I certainly can't put my finger on why, and I don't believe management can either, but I think it's certainly got to do with the work climate. It's certainly got to do with the industry, because of the hours that we have to work in the transit industry, especially when it comes down to a single parent when he or she has to work three shifts in one day to get eight hours of work. It's really hard to put your finger on it, but I know the number of women in the workforce in the transit industry is very low.

The Chair: I want to thank Ken Foster and Wally Majesky, speaking on behalf of the Amalgamated Transit Union, Canadian Council—Ontario Division. We appreciate the effort and the insight contained in your submissions, and we appreciate your taking the time to be here and participate in this process. We trust you'll be keeping an eye on what's happening with this legislation and how the committee functions.

Mr Majesky: Thank you, Mr Chairman, and good luck. You're going to need it, I think.

ONTARIO HOME BUILDERS' ASSOCIATION

The Chair: Our next participant is the Ontario Home Builders' Association. Will those people please come forward and have a seat. I want to remind people watching that of course these hearings are public and people are invited and indeed encouraged to come to Queen's Park during the course of this week and next week to observe these hearings. The committee is sitting from Monday through Thursday, as I say, this week and next week, and then we'll be travelling about the province.

Gentlemen, please tell us your names and your positions. Try to leave the second half of the half-hour for dialogue, which as you can see is sometimes lively and always interesting, and sometimes more animated than at other times.

Mr Phil McColeman: Good afternoon. I'm Phil McColeman, the first vice-president of the Ontario Home Builders' Association, and I will be the president this October. On my right is Andy Manahan, the director of industry relations. I introduced you; you didn't introduce yourself; sorry about that.

We appreciate the opportunity to present our concerns today on Bill 40. I'm a renovation contractor from Brantford, and I can testify to the difficult economic times we are in and the necessity for government and business to pull together to improve our situation. I've been a volunteer with the provincial association for six years, and with the Brantford Home Builders' Association for nine years.

At the outset, I wish to state that I am not anti-union. I'm for a healthy business environment because without businesses, there are no jobs.

The Ontario Home Builders' Association is the voice of the residential construction industry in Ontario, representing 3,800 member companies which are organized into 35 local associations across Ontario. Our membership is made up of all disciplines involved in residential construction, including builders, land developers, renovators, trade contractors, manufacturers, suppliers, realtors, mortgage lenders, apartment owners and managers, housing consultants, economists, planners, architects, engineers and lawyers. Together, they produce 80% of the province's new housing.

In a survey conducted of the Ontario Home Builders' Association membership in the spring of this year, the Ontario Labour Relations Act proposals for reform were viewed to be the third most important item for consideration. This and another "Government Report Card" survey taken in the summer are appended to this submission. The latter member survey found that the OLRA received the worst rating: 1.7 on a scale of 1 to 10.

This legislation reminds me of the controversy which currently surrounds the debate over garbage sites in the Toronto area. It is being imposed on communities that simply don't want it. We believe the proposals contained in last year's discussion paper have already had a negative effect on Ontario's business climate. If Bill 40 is passed as is, the detrimental consequences will be even worse. Although consequences of government policy are difficult to measure, certainly the surveys and polls taken point to a more pessimistic frame of mind.

It is relatively easy for a plant to relocate outside of Ontario and distribute goods into the province. Many individuals have heard stories of the intention of firms to move out of the province if the OLRA proposals are implemented. Therefore, not only are dollars global, but even existing plants and fixtures are internationally mobile.

I'll just stop for a moment, at that point in my notes, to give you what I would consider a very grass-roots example.

I come from a relatively mid-sized community. This winter, when I was flooding the rink with a neighbour down at the park at the end of the street, who I didn't know particularly well, we got to talking about business and how things were and such. I found out that this fellow was a former worker at a large farm implement manufacturer in Brantford that no longer exists, and currently had taken a job with a large manufacturer in the Cambridge area.

He went on to inform me that he was heading a production group at that firm, and he went on to tell me about how they had developed plans for an expansion of that facility to double its size and to double the workforce. But the reason for it not proceeding, in his mind—and he was not an upper-level manager but certainly felt the effects of this proposed legislation—was because the company would not be proceeding at this point in time because of the uncertainties of this pending legislation. This, by the way, is a company that does not have a union. He came from a company that had a very strong union, with which I'm very familiar as well.

He also told me about the good wage he was making—better than average, better than he was making in the previous plant—and he also commented on the mobility of this plant in the way it was built. It was built with a slab and then all the machinery was hung from the ceiling. This is the type of construction that certain new plants are being made of to be mobile. I just want to give you that as kind of an example from, I suppose, a very grass-roots level that I had this past year.

OHBA is even more perplexed by the recent announcement of an industrial strategy that does not recognize the dampening effects of the OLRA proposals. Any such strategy should realize the importance of supportive public policy to foster investment and promote job creation of all types.

I will briefly state how members of the Ontario Home Builders' Association will be impacted by this legislation.

1. Indirectly: If, for example, manufacturing or investment moves south of the border, then there could be a net outflow of jobs. Therefore, the overall demand for housing will be diminished in this causal relationship. Housing starts in 1991 were only 52,794, only half the level experienced during the peak year of 1987 of 105,213. Despite the federal housing incentives of the 5% down payment plan and the use of registered retirement savings plan funds for down payments, the housing market remains extremely sluggish. In 1992, we will have a modest gain to approximately 60,000 starts. Let me tell you again, being in business, how tough it will be even to get to 60,000.

2. Directly: Many of our members are small builders and renovators who have low volumes—less than five homes built per year—and most are outside of Toronto, and in particular, our membership is highly non-union. We do not see the purpose of attempting to unionize these small businesses, which seems to be one of the major goals of this bill, as this would serve no practical or productive purpose. Those who work in the residential construction industry generally have good paying jobs and have the flexibility of working at different job sites and sometimes even different companies.

In fact, the recent Environics poll demonstrates that the public has very little interest in joining unions at all.

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We would respectfully suggest that the government place less emphasis on its ideology and instead listen to the people who have expressed concern over this dramatic change in the way Ontario businesses are allowed to operate. While you likely will have heard these points already from other business groups and will undoubtedly receive more detailed analyses over the next few weeks, let me highlight some of the more damaging consequences.

The ban on the use of replacement workers would seriously affect business operations, impede economic development and sour labour-business relations. Individuals who disagree with the stance of the union would lose their democratic voice by not being allowed to cross the picket line to work. Thus, the long-term viability of a business could be eroded, especially during a fragile economic period.

Not only would the private sector be impacted, but municipal service provision would also be disrupted. For

example, critical public services such as the post office, hospitals, education and public works will be affected by these anti-scab proposals. This type of disruption would be grossly unfair to the taxpaying public and to businesses that depend on these types of services.

By allowing the Ontario Labour Relations Board to settle terms of a collective agreement, Bill 40 obliterates the impartial underpinnings of the board. This transformation of power transcends any judicial logic and runs counter to the more open and fair system that we have enjoyed in Ontario.

The Ontario Labour Relations Board will also have the power to grant automatic certification to a union and will not necessarily reflect the blessing of the employees. Furthermore, the elimination of post-application petitions will prevent employees who may not have been fully aware of the union organizing drive to express displeasure with the certification process.

The purpose clause definitely promotes the interests of unions. In the current act, there seems to be more balance, as the public interest is recognized, particularly with regard to collective bargaining. In OHBA's view, the encouragement of union organization will take precedence over social and economic objectives and, to us, this is clearly wrong.

The current act requires both parties to bargain in good faith, but Bill 40 removes the existing criteria for access to first-contract arbitration. It is unfathomable that arbitration would be available in every contract dispute once 30 days have elapsed after the calling of a strike. A union could simply bide its time in order to virtually guarantee a first contract, and this will undoubtedly make unionization attractive to employees despite the more detrimental long-term consequences.

In the interests of time, I will restrict my comments to these items even though there are other negative aspects of Bill 40.

All Ontarians are hoping for an economic renewal, and this proposed legislation will have just the opposite effect. It will create a climate where good management-labour relations are potentially soured and where both parties end up losing to our global competitors. When the Minister of Labour announced Bill 40 on June 4, he stated, "The legislation will be better for working people; better for employers through streamlined procedures and better for the province as a whole because it recognizes the fundamental changes in our economy."

In OHBA's opinion, nothing could be further from the truth. Surely, if the Premier and the government are genuine in their intentions about working with the business community, then, at a minimum, the proposals advanced in Bill 40 should be dramatically modified. OHBA's president sent a letter to the Premier on April 10, 1992, in which he asserted, "The proposed amendments to the Labour Relations Act have fuelled a debate that is spreading like an insidious cancer." By not even slightly altering the intent of the bill from the discussion paper stage, it is our opinion that the cancer is continuing to spread.

The polarization on this issue has continued to intensify. OHBA looks to this government to implement

changes which will truly benefit society and lead us out of this recession rather than prolong it. OHBA would encourage the government to recognize the current global economic realities and to not proceed with this seriously flawed piece of legislation.

On that note, I would be happy to answer any questions from the committee members.

The Chair: Thank you. Mr Tilson and Mr Turnbull, five minutes.

Mr Turnbull: Welcome to Queen's Park as one of my constituents. I suppose in going through these hearings regrettably we come up with the conclusion that there's a great polarization, and I have the feeling we're not going to achieve a terribly great amount. When you consider the consultation that occurred prior to the bill coming down, as you've suggested, very few changes of a substantive nature were made. The government would suggest that isn't true. It would suggest there are substantive changes. This obviously goes to the heart of the problem when you have a very polarized government which represents a very special interest group, but by the same token, they could say that about us.

As we go through these hearings, I know we're going to hear the same answers over and over again from both sides. My question to you would be, how can we persuade the government that the suggestions that there will be job loss and loss of income to Ontario are real? You mentioned the Environics poll. The government says: "Look, we don't agree with it. We think it's flawed." They've refused to do their own study. They've spent large amounts of money. They spent \$50,000 on subscribing to pay for the new union song, believe it or not. That's how taxpayers' money is being spent. The last person who was sitting here, Wally Majesky, is getting \$165,000 to do a study that the Ministry of Transportation initially said it didn't need, but they've refused to do a study of their own.

What can we do to persuade them that the harm we're suggesting is real? It's a long dialogue to begin with, but the question is what can we do to persuade them?

Mr McColeman: Specifically, as we've discussed this among the residential community of builders in the province, as with a lot of issues, you would put together a task force perhaps of some people like the neighbour of mine and ask them to give input through their own experiences. The task force could consist of labour, management and government and could take a hard look at the potential downside this will have on the future growth of existing companies and also on the creation of new businesses in Ontario in terms of job creation.

I think the single biggest thing we continue to hear from our membership is that this does nothing to create jobs, it only puts another impediment in the way of operating a business in Ontario. It's another disincentive.

Mr Turnbull: In fact, the Conservative Party has consistently suggested a tripartite commission to look at this, consisting of workers, government and business, and the government has seen fit not to pay heed to that. It has launched ahead with this. I guess it's payoff time for the union bosses.

Nevertheless, I keep on going back to the core question I'm asking you. The business community is saying there's going to be serious economic loss to this province both of jobs and investment. The union leadership—not the union members, because many of the rank and file are telling us they're concerned about the implications of this legislation—is pushing very hard to get this. How can we persuade the government that there is some validity to the studies or at least to pay attention to doing its own study?

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Mr McColeman: Hopefully, at the end of the day, when the hearings are finished, they'll recognize the detrimental effects that this is having, has had already, and the effects that it will continue to have, and they will pause and put together a task force and the necessary studies to just measure those effects and give us that information. Hopefully, at the end of the day, that's what happens.

Mr Tilson: There's been some discussion here and outside this committee on the effect of this legislation on investment in all industries, but specifically in your industry. I'd like you to comment, because I'm sure the two of you deal with people who are investing within and without and from outside the province. Allegations have been made by the NDP this afternoon that there's all kinds of investment coming into the province of Ontario and that everything's just fine.

On the other hand, there have been comments made that if this labour legislation specifically is passed as presented, investment will practically dry up as far as even the housing industry is concerned. Do you have any facts to give the committee from conversations that you've had with investors from within the province or outside the province on that whole subject of investment?

Mr McColeman: I do not have facts which I can give you today, but I can certainly pass along at a later date to all of you the comments that some of our key builder members have made and some of their rationales for not making investments in new property or development. There is not a lot of new development happening in the private sector. It seems to be very government-focused, non-profit housing. That's basically what's happening right now. There is very little private development happening.

Mr Ward: It's good to see you again. We meet on a regular basis, being from Brantford, and I always enjoy those meetings. I think you're going to be an excellent president of the home builders' association.

Mr McColeman: Why are you being so nice, Brad?

Mr Ward: In Brantford, our community has been hard hit. I agree that we never really recovered from the demise of the farm implement industry, Massey-Ferguson and White Farm, which went down just before the boom was supposed to come along. We really never did share in that boom.

However, we have had some good news in Brantford, and I can relate one investment decision by a Canadian company, Inter-City Gas, which made the decision—and it was during the original debate of labour reform—to close a plant in Red Bud, Illinois, and locate the lines for that company in KeepRite in Brantford, which was good news

for Brantford, in anticipation of doubling the workforce there over the next five years.

So there has been good and bad. I share your concern when we do have bad news, but we must balance that with reports of good news as well.

From the debate we've heard or the presentations we've heard as a committee and prior to this committee being formed to review this proposed legislation, I think there is consensus that the workplace and workforce have changed dramatically since the 1970s—more women than ever in the workforce, part-time work increasing dramatically over the last few years—and that the intent of labour reform is to deal with those changes that have been occurring since the 1970s.

I know there are concerns, because when we have our lunches we discuss this issue and others, and I realize there are specific concerns. But when you look at some of the proposals—a couple of examples: security guards' right to join trade unions is in every other province, including the federal jurisdiction; the petition restrictions are in existence in every other province; the full part-time workers right to single-unit representation is in every other jurisdiction, including the federal.

Those three areas are examples, since they are in existence in other jurisdictions throughout Canada. Ontario is the lone wolf in not having those. Do you feel you would be compelled to support those specific areas of labour reform, recognizing you do have specific concerns in other areas?

Mr McColeman: I don't believe, as an association of business people and tradespeople, that we would have any objection to the improvement of the labour environment for our workers. In fact with many of our companies our workers would totally resist the union because of the good treatment that is given and is necessary in today's business environment. We have talked many times about how you cannot operate today and treat workers as—perhaps management has changed over the years as well.

The need for stronger unionization perhaps doesn't even exist out there today. Perhaps it's a carryover from other reactions to management, as we've discussed in situations such as the farm implement industry where there were horrendous things happening on both sides of it.

I would suggest to you, first of all, that your rationale that it's happening elsewhere is not something we would subscribe to that should automatically be transposed into our environment. We should make our own bed and decide for ourselves, based on the health and the benefits of such a program.

We suggest, as an association, that it's been clearly stated today that we do not believe this is the time when these types of changes should be made to influence how businesses have to operate in this province. We do not believe this is the right economic time. Our members are struggling; they're falling by the wayside; they're hanging on by their fingernails to be in business. To have to then face further government intervention in their businesses is not something any of us would want at this time.

That's not to say we do not believe improvements shouldn't be made. In fact we would participate to help

draw up those benefits or improvements, as I suggested earlier with a question that came from this side, if that was decided. Things have changed and they've changed in a significant way in the way owners, operators and managers treat their employees today. We do not need this imposed on us.

Mr Cleary: Thank you, gentlemen, for your presentation. I've had the opportunity to meet with some of the local home builders in our area and, Phil, I think you made an excellent suggestion there about a task force with all three parties involved. We heard that same suggestion when we travelled around on Bill 118, the Power Corporation Act, that we should listen more. Anyway, it didn't happen, the legislation was brought to the House. Why should you think if it didn't happen on Bill 118, it might happen on this particular bill?

Mr McColeman: I suppose I can relate to that in only one way. I grew up in a very pro-labour home. That was my philosophical basis as I started out into the work world. I don't believe there's bad intent in terms of what people are trying to achieve, but hopefully all of the factors are considered and I don't know whether, as I read the research information that's been made available to us and also talked to the people, whether all avenues and things have been considered.

I hope our MPPs of all political parties have the common sense to stop and pause, because this issue has become so polarized, as was mentioned, and so antagonistic that implementation at this point will never be friendly no matter what happens, as has been mentioned.

Why not use the commonsense approach I believe was taught me, as I said, in a political way that should be taken on an issue like this. What I hope will prevail at the end of the day is that people will pause, think it through, think of the effects, study it and look at it at another time.

The Chair: Gentlemen, Phil McColeman and Andy Manahan, thank you very much for being here on behalf of the Ontario Home Builders' Association. It's a significant industry that you speak on behalf of. Your points were well made. We appreciate the time your organization took to prepare this submission and your interest and willingness to participate in the process. We trust you'll be keeping in touch. Thank you kindly.

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Mr Tilson: Mr Chair, I have a point of order, or a question to you. The clerk has distributed to members of the committee a list of organizations that wish to address this committee and I don't know whether he's counted them up or not. I suppose it's about 900 to 1,000—

The Chair: If I can interrupt you, do you want to use up the time of the next group, the More Jobs Coalition, or do you want to wait until 5 o'clock to recess, when the participants have finished making their presentations?

Mr Tilson: That's fine, Mr Chairman, if you're allowing us to speak at 5 o'clock.

The Chair: Sure.

Mr Tilson: That's all I was asking. Thank you.

MORE JOBS COALITION

The Chair: The More Jobs Coalition is here. We have your written submission which has been distributed. It will be made an exhibit, as will all the others and of course it will be available to any member of the public who wants it merely by inquiring of the clerk or of an MPP's office. Tell us your name, please and your position with the organization, if there is a title, and try to leave the second half of the half-hour for questions and exchanges.

Mr Dale Kerry: Thank you, Mr Chairman. I'll try to leave the time free.

Good afternoon, ladies and gentlemen. My name is Dale Kerry and I'm the chairman of the More Jobs Coalition. We're a group of about 110 businesses which came together to try to understand and to express our views on what is now known as Bill 40.

This is a large, very complex piece of legislation requiring an awful lot more than the 15 or 20 minutes available today, so I'm only going to be able to touch on a few points. The More Jobs Coalition has, however, commissioned an extensive analysis of the bill and we will submit that report to your committee within the next few weeks, certainly before you cease to sit.

As an object lesson in how not to do something constructive, the labour relations process really stands alone.

We, and I think this would be equally true of other business groups as well, have had literally dozens of meetings with government officials, both bureaucratic and political staff. We've made submissions, we've pointed out the adverse consequences that will flow from the legislation, consequences for our labour relations system and our economy, to little avail.

Giving credit where it's due, some changes have been made. For example, the hot cargo proposal, which would have spread conflicts to entirely innocent parties, has been dropped, but most changes from the earlier proposals really have not addressed our fundamental concerns.

The government has many times claimed that the Labour Relations Act has been the object of the most extensive consultation in Ontario's history. But if by consultation we mean "to deliberate together," as Webster's dictionary puts it, then there really has been no consultation with the employer sector worth mentioning.

Not surprisingly then, in view of the process, we're now on the verge of passing the most radical and ideological labour legislation in the industrialized world.

Governments, once elected, are supposed to represent everyone. This legislation does not do so. Rather, it represents the interests of union leaders and it does so at the expense of employers and of individuals.

We call on the government to involve capable representatives of all the parties to work out a good bill. Only by involving a balanced panel of knowledgeable labour relations practitioners can we hope to achieve legislation which will work for everyone, and this must be our goal.

It's our belief that Bill 40 will undermine investor confidence in Ontario and put at risk present and future jobs. Indeed, it may already be doing so. Previously, potential investors in Europe, Britain, Asia and the United States have expressed clearly their apprehensions about investing

in a jurisdiction with the sort of legislation found in Bill 40.

Why should they be apprehensive? Clearly, it's because these people understand that the thrust of Bill 40 is to diminish the value of their investment by pushing up costs and/or by placing their ability to operate and adjust to competition severely at risk. Investors perceive the force of government being used to push up costs and close down businesses which are trying to be competitive. That's why they are apprehensive.

The government's expressed view is that Bill 40 will be good for investment and for the economy. Investors are saying just the opposite.

Employers recognize also that Bill 40 will have a seriously negative impact on the collective bargaining process, which is the bedrock of our industrial relations system. The collective bargaining system in Ontario has been developed over about half a century. Employers and unions bargain together, and where there are disputes the labour relations board intervenes to keep things on a fair basis and to achieve a settlement. As a result, the board has attracted many outstanding members who, over time, have developed extensive and learned jurisprudence. The system has been fair and non-political. Preceding governments and the board have striven successfully to keep the system in balance.

In collective bargaining, the purpose is first of all to cause each party to focus on those things which are really important. The second purpose is to require the parties to determine their real bottom line.

The collective bargaining process provides a communication channel for the exchange. Abuse of the process is an unfair practice which brings penalties against the transgressor. Our collective bargaining system is successful and civilized. More than 95% of the contracts are bargained successfully, and our citizens enjoy the highest standard of living in the world, as the government has recognized.

How will the collective bargaining system be damaged? Here are a few—but really only a few—of the reasons:

The purpose clause states that one of the purposes of Bill 40 is to bring about improvement in terms and conditions of employment. Improvement in terms and conditions is what the collective bargaining process is designed to achieve. However, the purpose clause mandates that collective bargaining must achieve this improvement, thereby undermining the collective bargaining process itself.

Ontario has been fortunate in the quality of people who have sat on the Ontario Labour Relations Board. The board has developed the view that bargaining units should be comprised of employees who share a community of interest appropriate to effective collective bargaining. Bill 40 seeks to override established principles of bargaining unit configuration. The resulting bargaining units will not be conducive to effective representation of employee interests, because the bargaining units will not have been brought together for that purpose.

Currently, first-contract arbitration is available when bargaining has been unsuccessful due to a lack of effort, intransigence or bad faith. Under Bill 40, a first contract can be imposed merely through the passage of time. If one

of the parties can get its way just by setting a clock running, where is the incentive to use the collective bargaining process to its proper effect?

More than 95% of Ontario collective agreements are settled without a strike. The mere threat of a strike, and the prospect that the employer will continue operations during a strike, is usually enough to provide each party with an incentive to find an agreement. Under Bill 40, one party is free to strike while the other is not free to continue operations. This restriction, which will affect most employers, removes the balance needed for an effective collective bargaining process to work.

We might think of this anti-strikebreaker provision as an attempt to give one party a monopoly on the supply of labour. Where is the incentive to bargain seriously when you can get what you want by force? It's naïve to assume that better employment relationships will emerge from this provision.

Bill 40 enables the labour relations board to deem that all contracts contain certain provisions even if they were not agreed to through collective bargaining. This provision may even override provisions that were agreed to.

For example, take the provision requiring that an adjustment plan be negotiated in the event of a downsizing affecting 50 or more employees. If, through collective bargaining, the parties traded other things for an adjustment plan, one will be imposed anyway. Further, the parties may have agreed in a previous contract to an adjustment plan. Bill 40 seems to permit this previous agreement to be overturned if one party demands. Finally, there are already requirements of an adjustment plan in the Employment Standards Act, so the employer faces triple jeopardy under this provision.

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In short, ladies and gentlemen, we believe that the government, in its zeal to increase drastically the power of organized labour, seems willing to inflict great damage on the collective bargaining process itself. When that occurs, the entire labour relations system in the province will have been undermined.

The present labour relations system is balanced in such a way as to identify and preserve the rights of the three main parties; that is, the rights of trade unions, employers and employees. Bill 40 moves a great deal of power to trade unions at the expense of the other two groups. In the process, it seems likely that the balance needed to protect the rights of those groups will be lost.

For example, currently, employees who have signed a membership application but who later change their minds can sign a petition against union membership. This right will now be lost to employees.

Bill 40 allows unions the opportunity to combine bargaining units without any reference to the wishes of employees. Thus, employees who joined a union for one purpose may find their wishes disregarded in collective bargaining. Worse, they may find themselves out on strike against their wishes, and over issues of no concern to them.

The anti-replacement worker provision takes away from employees the right to return to work if union leaders

don't want them to return. We then have the ludicrous possibility of being forced to strike against one's wishes and being prevented from returning to work.

In summary, the balance of power in the employment relationship is so tilted by Bill 40 in favour of unions, and to the detriment of others, that the rights of employers and individuals are compromised.

Our prognosis for the labour relations system under Bill 40 is bleak. The effects must surely spill over into our economy and affect our ability to manage organizations efficiently and effectively. The irony is that by so damaging one party, Bill 40 removes any reasonable basis of an effective partnership between the parties just when one is urgently needed.

We have asked repeatedly that the government bring the workplace parties together to work out a fair, sensible and balanced approach to labour relations changes. Perhaps the Premier's advisory group will have a significant impact on what stands at the moment as a very ill-advised piece of legislation. We urge you on the committee to press the case urgently. After third reading it will be too late.

The Chair: Thank you, sir. Mr Fletcher, five minutes.

Mr Fletcher: Thank you for your presentation. I know this is only the second day of presentations, and we've already heard a number of briefs. As we go along, I'm hearing the concerns of people from the labour movement who are saying that there's coercion, that there's mistreatment of employees, especially in organizing, even in the workplace. One person from the anti-poverty group was talking about a person who is an immigrant, who was working from 9 o'clock in the morning until 11:30 at night at a pizza place and was too afraid to exercise his rights because he was afraid of reprisals from his employer.

We've heard from the business community, from different businesses that are saying, "There have to be changes, but we're not sure what the changes are." They're not really addressing the concerns of what the labour movement has been saying.

Even before this went on, the rhetoric that was going on, the hostility before this even became a draft piece of legislation, the back and forth rhetoric, the things that promoted the polarization we've been talking about, the opposition parties picked up on what was being said by different groups, such as your group and other groups, who were throwing the barbs out, back and forth. Now all of a sudden, even from the chamber of commerce, I get this conciliatory approach I'm sensing that, "Hey, we can work together on this."

We've come this far with a piece of legislation where we were forced, as a government, into a corner. We were being forced by the opposition and by different groups, through rhetoric, through that polarization, through that adversarial approach that seems to dominate the Ontario labour scene.

What we are trying to promote and what we see as being part of the promotion of this legislation is trying to get an understanding between labour and management, a way to work things out, and collective bargaining is one of those positions and one of the ways of doing it. If we look

at some of the economies of other countries where they do have progressive labour legislation, and also take into account progressive environmental laws, you can see where it's been working.

Then I have to look at my community, where there've been union and non-union shops that have reinvested. Just a few weeks ago, Linamar in Guelph, instead of moving to the United States, reinvested in Ontario, reinvested in Guelph, because of the Jobs Ontario Training fund it was accessing. It was something Mr Hasenfratz, really the owner of the company, applauded the government for, this initiative as far as training is concerned, because he said that in other countries we don't get this.

Then I'd also look at other companies such as Pavaco and a few other companies that have accessed some of the government funding as far as upgrading their facilities is concerned. What they did in that company was they went to the union and they got together with the people in the union and said, "Look, we're in dire straits and we have to work together to get this company rolling again." They all pitched in and did work together. There was no animosity, no adversarial approach to working things out.

When I look at this legislation, from what has been said, again from the adversarial approach, as far as what has been said by the opposition parties is concerned, they are claiming or trying to make it seem like every company, every worker, in Ontario is going to organize into a union and they're going to force your company to close down. That approach in itself is one that has been one of fear-mongering.

That's not what this piece of legislation is for. This piece of legislation is not one that's going to make every worker in Ontario want to run out and join a union. The option of joining a union is still going to be in the hands of people who, whether or not they want to, will make their own choice.

When I was going through your presentation, it presumes that once a person makes a choice whether or not to sign a card, he's going to all of a sudden be enlightened and say, "Hey, I made a mistake." Yet that may not be the case. People do sign cards of their own free will. They're not being coerced into doing it, and it presumes that unions are using strong-arm tactics to sign people up. Again, I look at the adversarial approach, and a lot of your presentation is very good, but you still take the position that people are going to, click, the light goes on, "I made a mistake of signing that card," or you presume that they're being coerced into it.

You come to the point of investment being driven out, yet we have seen examples of investment coming into the country, such as the places I've mentioned in my own community, and we can go to the big auto makers, we can go to Crayola, we can go to the ones that have been mentioned that are investing. That is not to say there hasn't been any lost investment—there has—but is it dire straits? Is it that bad that we are going to close every company in Ontario, that every worker is going to organize in Ontario and that everyone is going to be devastated by this piece of legislation?

Mr Kerry: I certainly hope you're not presuming that I or any of my colleagues are making that sort of contention. We don't presume that all companies are going to close down. We don't presume that all employees are going to want to belong to unions or not belong to unions. We don't presume either that employees who sign cards in large numbers then change their minds. We don't assume that at all.

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But picking up on the last point, if it is a fair statement that people who sign cards don't change their minds, then why is it necessary to put in Bill 40 the provision that they are not permitted to change their minds? That's all I was saying. Bill 40 removes from individuals the right to change their minds. Why is that sort of provision necessary? I don't know.

We also would not contend that nobody is going to invest in the province. This province has many advantages, but we certainly view Bill 40 as a significant disadvantage and it becomes more of a disadvantage the further away you get from it. I did refer to groups in Asia, Britain, the United States and Europe who have all expressed very negative views about their perception of organizational life under legislation of this kind. Whether you agree or disagree with their perception, perception is reality and they will make their decisions based upon that perception. I don't know if that answers your question, but it's an attempt.

Mr Offer: Thank you for your presentation. I certainly am looking forward to getting the analysis of the bill. I know of the work of the coalition in the previous months.

I was listening closely to the question that was posed by Mr Fletcher. One of the things at the very top of the question spoke about his surprise and amazement that some business groups are coming before this committee in a conciliatory fashion, and where was this earlier on. I know this doesn't have anything to do with the provisions of the bill, but I think it's an important point that must be brought forward.

As the question carried on, it went into other areas, but I think it's important that you share with the committee, with the government members, the efforts that have been made by the More Jobs Coalition to establish some sort of tripartite committee made up of labour, business and government to deal with this issue. This has not been done just today, but rather this is a request, I believe, that's been made for many months. I hope the government members will listen intently to what the position of a very important association has been.

Mr Kerry: I didn't think Mr Fletcher was actually referring to us, but just in case he may have gotten us mixed up with somebody else, I can tell you that we asked for—let me just back up one step. We have taken, throughout the piece, a very deliberate line of trying to be moderate and trying to entice true dialogue over the various chapters of the Labour Relations Act.

We've had a great many meetings and we have always attempted to make constructive comments. We began to

ask, approximately last September, that the government convene some sort of panel of knowledgeable labour relations practitioners who could sit down and really study what was being proposed at that time, to see if some way couldn't be worked out where we could have good legislation that would work to the benefit of everybody.

We started doing that, as I said—it's pushing on for a year ago now approximately—without any real result. In February, I think we produced the most extensive analysis on what were then the labour relations proposals and asked the government to enter into a dialogue over that analysis with, I would say, almost no result. It really is a bum rap to say that there is something sudden about groups appearing and putting forward their points in a moderate way and asking for some way of coming to a meeting of the minds on this.

This has been going on for a long time. The problem is that the government has not seen fit to do it. As a result, what we have has turned into a sort of dialogue of the deaf. We now have one party that feels it's won and it's just going to keep its wins, and the devil take the hindmost. It's very unfortunate, but that seems to be the position we're in.

At the end of today, right now, we have Bill 40, which we believe is going to have seriously detrimental effects on the labour relations system in the province, on the so-called objective of partnership and, I think inevitably, on the economy in general.

To pick up one other point Mr Fletcher made, if I might, there are people investing. There was an investment announced yesterday and I'll just use that as an example. It was \$660 million, or something of that sort, by Ford Motor. That's the second Ford investment I've noticed. But when you really take a look, what Ford has said is, "We're prepared to invest sufficient funds to maintain what we've already got, but we are not announcing investments of new money," which we desperately need in Ontario to expand the economy and to set us on a proper base for growth and reasonable prosperity in the future. It's a status quo situation. I think it's a little bit like the baseball pitcher who said, "If you're not moving forward, you're moving backwards," and we're not moving forward.

Mr Tilson: I too will be looking forward to your analysis or the analysis you've commissioned of the bill. I would like you to make some comments, if you are able to, on the subject of the part-time employee, in other words, the bargaining unit structure. As I understand it now, with this bill, if the two groups, the full-time employee and the part-time employee, are in a company and an application for certification is made, as long as the required percentage is obtained, albeit, say, by the full-time employee, the part-time employee will also be certified in that same unit, even though he or she doesn't wish to be certified.

Mr Kerry: That's a possibility.

Mr Tilson: That's what I understand is a fact. Of course, it's wonderful for the union management because it means more union fees. The part-time employees really aren't interested in pension plans or long-term security.

They're not interested in a whole slew of benefit packages the full-time employee might wish, yet they're forced to join this union even though they, as a group, don't want it.

I don't know whether you've had an opportunity to study this or to predict what that might mean. My question to you is, for a business that hires full-time or part-time employees, will that have an effect on the hiring of part-time employees, or indeed will part-time employees wish to join when they realize this is one more tax they're going to have to pay, namely, the union fees?

Mr Kerry: I don't know about the attitudes of the part-time people on hiring. I would expect that certainly some employers will take a very hard look at their hiring practices and the way the work is designed and make some adjustments according to what seems best to that business.

I expect that; I don't know for certain that will happen, but I would expect so, for the simple reason that I think any competent labour relations person would tell you that from the perspective of the two groups of people, the interests of the two groups in collective bargaining are not the same. That is the main reason those kinds of groups have tended to be looked at separately, because together you do not have a community of interests for collective bargaining purposes. As a result, the whole collective bargaining process becomes that much more difficult and the issues between the two groups are quite different.

1530

Mr Turnbull: Mr Kerry, just briefly, the government has called into question the veracity of the Ernst and Young study which suggested that the result of implementation of this law would cost 295,000 jobs and just under \$9 billion. You made a comment that perception is reality. I wonder if you could just expand on that and the veracity of these numbers.

Mr Kerry: I don't know about the veracity of the numbers. That's not a study with which we have had anything to do. I think I can say for certain that Bill 40 in law is not going to create any jobs. Our group has sent to the Premier material on at least 20 companies that have written to talk about the negative employment effects on their business if this becomes law. So I have to assume that somewhere between one and 295,000 there is probably a number for job loss.

The Chair: You've made a very insightful presentation this afternoon, Mr Kerry. We want to thank you and the More Jobs Coalition for the preparation of your submissions, for attending here today and for your participation in this process. We trust you'll be monitoring the work of this committee and the progress of the bill. If you're interested, you'll keep in touch.

INTERCEDE

The Chair: The next participant is a group called Intercede, the Toronto Organization for Domestic Workers' Rights. Perhaps those people speaking on behalf of Intercede would come forward and seat themselves at a microphone. Tell us your names please, your titles or positions if any, and try to save the second half of the half-hour for questions and dialogue.

Ms Fely Villasin: I'm Fely Villasin and I'm the coordinator of Intercede, otherwise known as the Toronto Organization for Domestic Workers' Rights. I am here with officers and members of our organization. Pura Valasco is the current president of Intercede. Irma Charles is currently working as a domestic worker and is a member of our organization. Laxmi Rao continues also to be a member of our organization and is looking for work other than domestic work.

We're going to have short presentations. We are quite nervous, because we don't do this every day.

The Chair: We're nervous too. Does it help any to know that?

Ms Villasin: What we would like to do is to answer your questions. I've asked my friends to just talk from the heart and to say why we need to have the right to have a union. We will start with Pura Valasco and we will see if Irma and Laxmi have something to say.

Ms Pura Valasco: Thank you very much for inviting Intercede, the Toronto Organization for Domestic Workers' Rights. I was a domestic worker for two years and I'm now the president of Intercede.

First, our organization would like to thank this committee for inviting us. Also, we would like to thank the provincial government for considering domestic domestic workers to be included in the right to form a union. The reform to the Ontario Labour Relations Act has been long overdue.

The present exclusion of domestic workers from the act cannot be justified. Domestic work is very important labour. It should be recognized as important labour because we take care of your babies, and we take care of your elderly and disabled. The place of work, the houses where we work, should be considered as workplaces wherein employment standards should be implemented and respected.

Based on my experience as a domestic worker, my only bargaining power when I was exploited and abused by my employer—one of the most prominent families in Ontario, in Toronto—was to leave the workplace. That was the only bargaining power I had, to leave the workplace and finish my working relationship with my employer. The reality in the domestic field is that domestic workers are at the mercy of their employers. We have the notion that what we do is not something that could be negotiated at the table. The relationship between an employer and a domestic worker is based on the good faith of the employer who can give us the place to work, the place to live.

It's time for your country to recognize the work that we do because we've been exploited for so many years. The exploitation goes on. At the moment, the federal government has trapped us in a very precarious situation of requiring us to live in with our employers and no employment standard has been respected. As of this point, only two domestic workers were able to win their campaign for the recognition of their long working hours. In the case of one of our members, Deepa, she was able to get back the long-overdue compensation she was supposed to get from her employer.

I would not make my presentation so long because I have to give you Irma Charles. I just would like to say to this committee that it is long-overdue recognition of domestic work as an important labour sector in this country.

Ms Irma Charles: My name is Irma Charles. I'm a member of the domestic workers. I think it is right for us to have a union because every place has a union whether you're working in a factory or somewhere else. We need a union because we don't have any rights. When Intercede goes to intercede, it cannot negotiate with the employer and say to him, "Look, the employee says so and the employer says that." They cannot do that. If we have a union, the union can negotiate for us. I think it is time for us to have a union. I think that is all I have to say.

Ms Laxmi Rao: My name is Laxmi Rao. I am a member of Intercede. Thanks for the invitation for a presentation. I have worked in domestic work from 1987 to 1991 but I have not been paid wages from my employers for four years, and I'd like to have a union for the domestic workers. I did not get even my vacation pay or sick pay. Even though I was alone in this country, when I left my employer's place I went to a shelter and they gave me a telephone number for Intercede and legal aid. I went to another employer, but he has paid me only \$400 per month and now I am working at the factory as a helper.

1540

Ms Villasin: I would just like to say that we consider taking out from the OLRA the exemption for domestic workers to organize as really only a first step. It's a symbolic step; it will not do much for us. We will have to fight for certain mechanisms. There have to be certain mechanisms in place for the right to organize if it is ever approved as part of this bill. We would still have a way to go in order to be able to organize domestic workers who work in isolation and who face employers one to one in the workplace.

In the first place, I think the OLRA provides for the workplace to have more than one employee. It's a technicality already that even if we have the right to organize domestic workers into a union, we will still have to take that out of the act; for example, the consideration that you have to have more than one employee.

We have ideas on how we will be able to organize as a union, but even if it has come this late, we still appreciate the fact that for the first time domestic workers will be considered to be workers like others and have the right to organize as other workers have.

Thank you. We're ready for your questions.

Mr Offer: Thank you for the presentation. My question was actually going to be on the very last point you brought forward. I don't know if you yourself or some of the ministry officials could possibly help. It's my understanding that the vast majority of workplaces would be with one employee. It is also my understanding that the minimum number of employees, before they could be unionized, is two.

I am very much concerned about and aware of the issues, but under the provisions of the bill it would be my understanding and hope that maybe the ministry officials,

if not yourself, could help us as to how your issue is addressed when the very large number of employees are only one in the workplace home, whereas the minimum number required is two.

As I ask that question, I apologize for adding on this next part. I would like to obtain from you your thoughts as to whether maybe more emphasis should be made, with the Employment Standards Act and the enforcement provisions under the act and the branch, in order to deal with the very real and important matters you've brought forward today.

Ms Villasin: I did bring copies of our response to the proposed reforms and I will request that all of you have those copies. I have them with me. I did not want to read them here. We do have some ideas about how we can transition into a bargaining group, and we have addressed the fact that we have to bargain as a sector and not as one employee with an employer.

That is the reason why, as far as we are concerned, all we want out of this round is that the right to organize be given to domestic workers. I think that in this round, though, the bill has to consider this question of one employee per workplace for domestic workers, so we will supply you with the ideas that we have initially.

These are by no means complete ideas, but as an organization we have talked about this. We've met about this, and one of the things the domestic workers are much in favour of is the ability of their own organization to be able to negotiate better conditions and also to represent them in employer-employee disputes.

Mr McGuinty: I wonder if I could just pursue that a bit further, please. I am not clear. Who would form part of the bargaining unit that you see that would be of assistance to you?

Ms Villasin: On our side or on the employers' side?

Mr McGuinty: On your side.

Ms Villasin: What we think we should be able to have is a central registry. Right now Intercede actually is almost a quasi-union, but we don't have the right to bargain for the domestic workers. We don't have the right to enter a dispute on their behalf and negotiate with their employers. What we need to be able to do perhaps is to have a mandated registry that would be able to have a list of the domestic workers who are employed at any one time.

A central body like that would be able to make contact with the workers and be able to give them their rights. That body could perhaps negotiate or have life insurance or health insurance for everyone, something that is just individually taken by domestic workers. This is how we would like to proceed, but in terms of what the bill has for us right now, it's really only a first step.

Mr Tilson: I think that's my problem as well, understanding how you expect to become part of a union organization, specifically when the matter is personal between a domestic and an individual home.

I don't know what happens if there are problems. Does the organization picket the home, when the home next door may be perfectly upstanding and treat the domestic worker properly? I have trouble understanding specifically

how, in the traditional employer-employee relationship as far as a union is concerned, you would fit into that, because the domestic worker is a special type of occupation. It's a very personalized occupation. I guess I, like my friends, am having difficulty understanding specifically how you would fit into that type of framework.

Ms Valasco: Can I answer the question? This is precisely part of the presentation I made. The relationship between an employer and an employee is no longer a private matter. It's business. The thing is that the employers take advantage of the situation. Since the workplace is in their homes, they think it's a private matter, but in reality it is a business relationship between an employee and an employer. I get paid for the services I render, and an employer pays me for what I render.

I think it's very important for the government to recognize that it's important that it not only should give us in legislation the right to form a union but it should provide a mechanism for us to get organized. In terms of if we have the central registry, and through the central registry we will have the opportunity to be able to reach out to other workers and inform them about their employment rights and immigration policies relevant to their work, and by having us directly contact the employees we would be able to educate the workers on how to negotiate with employers.

I feel, based on my experience as a domestic worker, that I need someone to speak for me, because the reality is that the relationship between my employer and myself is not equal. The playing field is not equal. The workplace is his place, so I cannot assert my rights. It was difficult for me to assert to a very rich person that I am a worker and that I deserve the same rights as any other worker.

1550

Mr Tilson: One of the committee members suggested that perhaps an inquiry could be made on tightening up certain provisions of the Employment Standards Act; in other words, if you're being treated improperly or unfairly there is legislation in place that might deal with that. Have you any thoughts on that?

Ms Valasco: There is the Employment Standards Act but it's not respected because nobody is keeping track of what is going on inside a house because it's a private place. Whereas if we have a union, then the union can act as—I don't want to use the word "watchdog"—our protector in looking into what's going on inside a workplace. By recognizing too that domestic work is labour, then you recognize that the house is a workplace. That's the first thing that should be recognized: that the house is a workplace.

Mr Tilson: So you are suggesting that the union would be able to go into an individual's house.

Ms Villasin: What we are suggesting is that in the way we are organized now, especially women workers, the traditional structures may not necessarily apply in all their forms. This is the reason why, for example, one of the things we would like to be able to do is actually to be able to suggest how it is that we can bargain broadly as a sector. Perhaps we could have a council of employers bargaining with the sector of domestic workers.

The point is that domestic work, like garment home work, does not follow traditional workplaces the way we have known them and therefore the way we will be organizing will have to also change, will have to be non-traditional in that sense. I can assure you that if this bill is approved, we'll have to go farther than just this. But we have to begin here and it's really just a first step.

Mr Tilson: It gets back to my initial question. I understand your problem and I believe you when you say there are problems. As I have some knowledge of the union structure—I don't profess to be an expert on it but I have some knowledge of it—the question I have is simply understanding how the union will be able to legally help you in the special circumstances that you're in. Thank you very much.

The Chair: Research would like some clarification. Are you suggesting that a model which might be suitable would be one similar to the hiring hall model of bricklayers, carpenters or seafarers?

Ms Villasin: We are looking into that, actually.

The Chair: Are you suggesting that is perhaps a model which could represent as a trade union the interests of domestic workers?

Ms Villasin: Yes.

Ms Murdock: Actually, I may assist research on this, because that leads into my question.

It's nice to see an all-women presentation. It is because so many women are in the workforce now, particularly in the part-time positions, that it becomes really important to look at their plight within the labour market.

In terms of domestic work, I have a couple of questions based on some of the things that were presented today. I'm glad to see that two stories were told, because I think that's really important; it gives us a greater understanding. In terms of domestic workers, I'd like the distinction to be cleared up as to whether that means what we in general society know as nannies, or whether it's what we generally know as housekeepers, and what the distinction is.

In terms of a model to be used, as has been suggested by the Chair in terms of a hiring hall, or what you have already said in terms of broad-based bargaining, would that require mandatory registration on the parts of the domestic worker and then application by the householder to the registry? Is that what you're thinking of? And would training then be required for the domestic worker? How far is that going to go? I realize that this is a first step in Bill 40, but it is also going to involve a lot of thinking along that line to go any further, as you suggest.

Ms Villasin: In terms of mandatory registration, we have looked at that. Right now what would work is the fact that all employers of domestic workers are actually required to register with Revenue Canada. They are all registered with the federal government because the offer of employment is done through Canada employment centres. So that is one way we can at least be able to perhaps negotiate that the registration of employers, of foreign domestic workers especially, can be available to, let us say, a central registry.

Ms Murdock: Registration of employers or employees?

Ms Villasin: Employers. Employers are registered to get an employee. Therefore, we would hope that we could make it mandatory that whenever a domestic worker is hired, her name is available to, for example, a central registry.

We know that there are questions of privacy that come up, but the point is that they have to register already anyway. They register with Revenue Canada as employers. They also register with the immigration department. So we think we could perhaps try negotiating to have a list of domestic workers hired and be able to have access to them—access meaning that they can be called. They can be introduced, for example, to a central registry. They can be informed that there is such a thing as a central registry and that they can be part of that.

Ms Murdock: It's a little difficult. I'm trying to figure out—that has confused me more actually than the original. I was thinking along the lines that the domestic workers themselves would register, and then if I needed someone to work in my home, I would go there to get you.

Ms Villasin: Yes, if the model that we went by was the hiring hall model. Something to that effect was actually done by a union of domestic workers a long time ago, I think in the US somewhere, Michigan or somewhere. I can't remember. It was a hiring hall type, where employers register and domestic workers register, a sort of hiring hall.

We are not sure. We actually have a study that we are conducting now in order to be able to present a workable structure. Certainly right now, while it's true that Intercede actually gets most of the domestic workers who work in the Metro area—we have a membership of 2,500—this is only on the basis of our outreach and word of mouth. The membership is voluntary, of course. I don't think we would have such a drastic departure from that, but we would certainly wish to be able not just to depend on word of mouth and that kind of thing. If we have a union, it's got to be an organization that can access workers.

1600

Ms Murdock: Just for clarification, what is your definition of a domestic worker?

Ms Villasin: Domestic workers include nannies, housekeepers and now someone who works in the home to take care of children, the elderly and the disabled.

The Chair: Thank you, Ms Valasco, Ms Villasin, Ms Charles and Ms Rao, for coming here and speaking on behalf of Intercede. You've made a very unique presentation. It's been a very human and visceral one, one that all of us appreciate your taking the energy and time to do. We're appreciative of you coming here this afternoon and we're grateful to you.

The transcript of your presentation, by way of Hansard, is available to you. Just let the clerk know and that office will make sure you get as many copies of it as you want. We trust that you'll be keeping in touch with the committee as it considers this bill and with various MPs who represent you in the Legislature. You're welcome to stay, as is any member of the public. These are public hearings and we'll be here in Toronto till Thursday and again next

week till Thursday. You're welcome any time to drop in and observe the process. On behalf of the committee, thank you very much.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF CANADA

The Chair: The next participant is the United Electrical, Radio and Machine Workers of Canada, three people participating in the presentation. Come forward and seat yourselves in front of a microphone. Let us know who you are and titles, if any. You have a presentation that's going to be distributed to the members of the committee and it will be made an exhibit. Please give us the second half of the half-hour for questions and commentary.

Mr Joe McCabe: My name is Joe McCabe. I'm the national representative with the United Electrical, Radio and Machine Workers of Canada. With me are a worker by the name of Prakash Persaud and a former worker of one of the shops we tried to organize, approximately seven years ago.

I will be giving a shortened version of the presentation that's been given to you now. That's approximately 16 pages long. The oral version is much shorter, but there will be reference points in it so you can follow along with it.

On behalf of the United Electrical, Radio and Machine Workers of Canada, we are pleased to respond to the government's OLRA legislation. Our union, through the OFL, endorsed the position of the labour representative to the labour law reform committee. Many of the suggested reforms appear in the ministry's legislation; many do not. We wish to first frame the discussion so that both the legislation and our suggestions are considered in the light of various opinions.

In any modern economic context, unions are essential for two reasons. First, even within the existing economic framework, unions democratize at least a little the economic decision-making process in our society. They make a process which would otherwise be completely secretive and totally undemocratic a little more open and democratic.

Second, unions are one of the most direct mechanisms for the redistribution of wealth because they put pressure for the wealth created by workers to be distributed in a more equitable fashion than would be the case if corporations were left strictly on their own to allocate compensation and benefits.

Both of these impacts of unionization—redistribution of wealth and power—are healthy ones for a broader community beyond the immediate workplace. Societies which have more even distribution of wealth and power have lower rates of crime, more equality for women, healthier children, lower unemployment, healthier workplaces, higher productivity per worker and a higher general standard of living than societies with greater concentration of wealth.

Also, contrary to corporate mythology about unionization lowering productivity, recent studies done in the US, including ones comparing productivity in plants with only strong unions versus ones with a union and an employee involvement program, have found productivity highest in

those plants with strong unions and no employee involvement program. Interestingly, plants with no unions scored lowest in productivity. This is true even when plants owned by the same corporation are matched for wages, products and technology used.

With every advance in the position of average working people in Ontario, be it through the prohibition of child labour or the establishment of a public health care system, a course of protest has risen from the ranks of the wealthy and the corporations about how such reforms would drive investment out of Ontario and result in job loss. We are therefore not surprised to hear the shrieks of outrage that greet the government's introduction of the OLRA reforms.

We must never forget that not being unionized carries a high price for workers. Had the Westray miners been unionized, it is very likely that the dangerous conditions that led to the deaths of 26 workers in May would not have been permitted to persist.

We are heartened by the government's recent calls for partnership and cooperation between business and unions, providing that partnership is understood as a transfer of power from those who have too much of it, the corporations, to those who have too little, the workers and the communities.

Given all of the above, we believe the government should do everything in its power to ensure that as many working people as possible belong to unions.

In this oral presentation we will discuss only some of our key concerns in order to allow time for questions. UE's more complete response is contained in the written version of our presentation.

The purpose clause: We strongly recommend that the government amend the legislation to include as an objective the advancement of increased worker participation and control of decision-making in the workplace. Workers are still not equal partners in the workplace, let alone do they have the quota of control which corresponds to either the numbers or contribution to the work process. Inclusion of a clause which specifically acknowledges this as a legitimate objective of the OLRA would be useful and fair.

Examination of labour relations with three typical employers points to the urgent need for the OLRA reforms. The use of scabs in industrial conflicts at the Pre-Fab-Vitafoam plant is an example. This is one of the plants that we have. When UE members went on strike at the Pre-Fab-Vitafoam plant in 1979 and again in 1985, strikebreakers were brought in. The company transferred production to its other plant. People were fired and some were arrested for picket line incidents. In the end, the contract was not a good one and the workers there, with an average base rate of only \$8.50 an hour, were recently on strike again. The company again used scabs.

Although we are disappointed the legislation proposed does not entirely rule out the use of scabs, since it allows the production to be transferred to another plant where scabs may well be used, we do welcome the restrictions on the use of scabs which are contained in this proposal.

We have also had strikes broken through the use of scabs at the following locations: TIE Communications in Downsview in 1984; Wilkinson plant in Parkdale in

Toronto in 1979; Poly-Bottle in Rexdale in 1979. In most cases the workers on strike were women. Details of these things are provided in our full context presentation.

1610

Other incidents at Pre-Fab demonstrate the need for protection of workers from discipline during strikes. During the 1985 strike at Pre-Fab a worker was fired between the time UE signed the memorandum of agreement and the ratification vote. UE requested arbitration, but was told that we had no access to arbitration because the collective agreement was not in effect at the time of the firing.

UE then filed for a request for remedy with the Ontario Labour Relations Board on the grounds of unfair labour practice, stating that the employee had been terminated for union activities. The OLRB found that although the dismissal was unfair, the termination could not be proven to have been for union activities and that since there was no legislation covering unjust dismissals during a strike, the OLRB could not offer any remedy. The worker lost his job.

A similar incident occurred during the TIE Communications strike in Downsview in 1984 when an employee active on the picket line was terminated for having allegedly falsified information on the application form two to three years previously.

Effectively, the decision of the employer to time a dismissal or discipline of an employee during a strike must always be understood for what it is, an attempt to intimidate other workers. Otherwise, the employer would either have raised the matter before collective bargaining began or waited until the strike was settled. Since no work is being performed by the employee during the strike, the employer cannot credibly argue that the discipline relates to work performances during the strike, or that failure to dismiss or discipline immediately will impede the proper functioning of the work process.

Therefore, we support the government's amendment to provide protection from unjust dismissal or discipline during a strike or lockout. However, we strongly recommend that this be enforced by a ban on all disciplines and dismissals during such disputes without prior permission from the OLRB.

In addition to the above problems at Pre-Fab, we have also faced the refusal of that company to allow benefits to be continued, even when the union is willing and prepared to pay the entire cost of maintaining the benefits. Legislation continuing benefit coverage at the union's expense during a strike is welcome.

Most employers already make such arrangements. When they do not, the consequences can be tragic. The spouse of one of our members died during or shortly after a strike at the Fedders plant in Orangeville in 1990. We were not able to secure equivalent life insurance to cover the workers for the period of the strike; therefore, this member received little of the compensation which would normally have gone to her after the death of her spouse.

As well, discontinuation of benefits may leave employees vulnerable to insurance company demands that certain medical criteria be met before reinstatement of insurance.

Organizing certification of the Sylvania case: The two brothers beside me are both from Sylvania.

In our experience, anti-union petitions are always orchestrated by management. Petitions have profound chilling effects upon the organization drive since in the process of collecting signatures for the petitions, individual employees are easily intimidated and become fearful of management's backlash against their wishes to join a union.

The government's decision to disallow petitions after a union applies for certification is long overdue and a welcome step. However, we would have preferred to see an outright ban on the practice since as the discussion paper indicated, the vast majority are found to be orchestrated by management and they delay and thwart the exercise of the employees' democratic right to organize a union and bargain collectively.

In 1984, UE signed up 66 workers of a workforce of approximately 100 at the GTE Sylvania plant in Etobicoke and applied for automatic certification in January 1985. The company circulated a petition. To enable them to gather names, GTE Sylvania even staged a power failure in the factory one day claiming that a hydro transformer had blown. In the dark, the company stool-pigeons went around to the workers and called them one by one into the back office where, by flashlight, each worker was asked to sign a petition. Using such tactics, the company succeeded in getting 36 signatures, which nearly cost us the bid for automatic certification.

We checked with the local hydro authorities and were told that no transformer had blown. However, when five of the petition signers later revoked their signatures, the OLRB granted certification. Although the certification bid was not lost, bargaining for a decent first contract was very difficult. GTE Sylvania made a bid to decertify the union after the first contract was signed. The board found that the decertification petition failed to get enough signatures after several of the signers withdrew their signatures.

As indicated by the above, petitions never reflect the uncoerced will of the employees.

We have had concrete experiences of the impact of petitions in several other plants: Labelmaster in Georgetown, Barrie Plumbing and Electrical Supplies Co Ltd, Modular Controls in Hamilton and H. J. Langan in Malton in 1987. In all cases but the Sylvania one, the atmosphere of intimidation created by counterpetitions led to the loss of a certification bid despite the fact that the majority of the workers had decided to join a union.

We have had other experiences with Sylvania which also point to the need for legislation to protect workers from unjust dismissal during organizing drives. When we organized the GTE Sylvania plant in Rexdale, employees were fired. We applied for automatic certification in September of 1984 with 19 of 25 workers signed up as members. The company claimed that certain names were on the list that it did not consider to be employees.

The matter dragged on from September 1984 to January 1986 before going to a vote. During that period, on July 12, 1985, the chief union organizer was fired. In the atmosphere that prevailed after the firing, the employees became very scared. The vote then was split 14 to 14;

therefore, our certification bid was lost. The other organizer was fired after the vote.

We have had similar experiences of the chilling effect of discipline and dismissals at Aztec Steel Manufacturing in Mississauga in 1980 and at Westinghouse in Perth after the company moved its switchgear production out of Hamilton to evade unionization of its employees.

UE has had several other very bitter experiences with companies using their powers of dismissal or discipline to terrorize workers during an organizing drive. The chilling effect when any employee, particularly a union organizer, is dismissed for whatever alleged or real reason during an organizing drive is so dramatic that very frequently the certification vote will be lost in shops where as many as 80% of the workers have signed union cards only a week before.

In our experiences, employers who have determined to prevent their employees from unionizing will always try to dismiss at least some employees during the organizing drive, confident that even if the employer is later found by the OLRB to have been at fault, the dismissals will have sufficiently terrorized the remaining employees that the certification vote may well be lost.

Having a more expedited procedure of OLRB examinations after the fact of dismissal or discipline will not inhibit this. Only an absolute prohibition on dismissals or discipline without prior leave to the OLRB during an organizing drive or decertification bid, with strong penalties for infringement, will inhibit employers from this anti-union practice.

The Westinghouse case and successor rights: The OLRA amendments do not deal adequately with the right of a union to continue to represent the workers when production is relocated elsewhere in Ontario. For example, in 1979 Westinghouse relocated its switchgear operations from its Hamilton plant, where the workers were represented by UE, to four different Ontario locations—Mount Forest, Alliston, Perth and Mississauga—in an effort to avoid having unionized employees.

The OLRB agreed with UE that Westinghouse had engaged in unfair labour practices, since its relocation was clearly motivated by anti-union animus, and a number of remedies were ordered. Unfortunately the OLRB decision came eight months after the UE complained. Since the company president had admitted that the relocation was motivated by a wish to evade unionization, it was very difficult to succeed in our unionization efforts at the other plants. Workers were scared that unionizing would lead to yet another closure.

In Perth we succeeded in a certification bid, only to face a decertification bid by Westinghouse, a bid which we lost after the company fired the organizer just before the decertification vote. We are to this day still trying to organize the Alliston plant. Only Mount Forest remains unionized. The relocation resulted in a net loss of jobs in Ontario and lower wages and poor working conditions for the remaining Westinghouse workers.

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Adjustment programs: Given the magnitude of the job losses in Ontario, we are disappointed that the OLRA

amendments do not provide for compulsory adjustment programs and closure packages to be obligatory to collective agreements. Underlying the amendments dealing with this issue is the erroneous assumption that labour and management have similar interests. "You are in the same boat, you and business share the same interests, so row together," labour is admonished. While it may be true that in some instances labour and management are in the same boat, unfortunately they own the boat and they control the steering while we do all the rowing.

At no point in the process of collective bargaining is this more apparent than when a plant layoff or closure is announced. Generally, the company intends to leave town with as little expense as possible consistent with its wishes to avoid bad publicity if its sales are dependent on public goodwill. The employees on the other hand are left in a state of shock, scrambling for whatever scraps of a closure package they can negotiate from such a weak bargaining position. Often they receive little better than the legal minimum. Instead, the company should be obliged to include such issues in the collective agreement.

Whenever the employer plans significant changes which might affect the working conditions or job security of employees, ie, technological changes, corporate reorganization, contracting out, plant closures, layoffs etc, employees have a right to full disclosure of the relevant corporate information, advance notice and the right to negotiate an actual change themselves in order to minimize the impact on the employees.

As countless employees caught in plant closures and layoffs have said, the time to negotiate a closure package is the day the plant opens, not when a closure is already announced. Strong closure packages will not prevent unproductive plants from being closed but they will inhibit companies from closing productive, profitable facilities merely to maximize profit at another location.

In the best of all possible worlds, working people, since they form the majority of people involved in any workplace, would be in firm control of all the major economic and social decisions in their workplace. A government which recognized that would then take steps to move beyond the voluntarist framework in which labour relations in Ontario currently function to institute unionization of all workers. Just as we do not allow municipalities to be run by a small group of self-appointed, unelected persons, so we would insist that the base of our economy, the workplace, be run by democratically elected persons.

However, we do not live in the best of all possible worlds. In view of that, we welcome the significant reforms offered by the Ministry of Labour, although they do not go far enough to achieve what is achievable even in the current economic and political context.

The Chair: Thank you, sir. Mr Tilson.

Mr Tilson: I should tell you that I represent the community where Fedders in Orangeville is located which you have spoken of. I should also tell you that the plant, as you know, closed and a considerable number of people in my community lost their jobs.

Many of those same people approached my office and were most disappointed in how the union handled the whole matter. In fact one of the questions that was continually asked of me, specifically with the new labour legislation that's been proposed, is, "Why can't we make it as easy to get rid of a union that might be incompetent as it is to certify it?" That was a question that was put to me by a number of employees who were most disappointed in how their union handled that matter.

My question to you is on the subject of fairness, and specifically on the subject of replacement workers who, as I understand it, with the exception of emergency positions, are banned. In the same way that the employer cannot hire employee replacements, would it be just as fair to not allow the employee to find another job while that strike is taking place? Would that be as fair a proposal?

Mr McCabe: I don't quite understand what you're saying.

Mr Tilson: The fact of the matter is that employees are now entitled to go out and work while a strike is on. They are entitled to work anywhere as long as they meet the requirement to participate in the strike, but notwithstanding that, they can go out and get any other job they wish. The question is, if an employer is not allowed to retain replacement workers, should the employee of that firm be allowed to go out and work elsewhere during that strike?

Mr McCabe: That would be the employees' decision. I can't answer for the employees. That is their decision.

Mr Tilson: That's my point. We are talking about a fair bargaining process. Much of your speech was spent on the unfairness of the system. I'm sure you could paint me stories. That's precisely why I referred you to the other half of the Fedders story. Those employees were not happy with a union and wanted to get rid of it.

Mr McCabe: That may be your opinion, or maybe a couple of individuals may have been dissatisfied with a certain aspect of it.

Mr Tilson: I'm only telling you the numbers of people who came to my office and told me that, sir.

Mr McCabe: Then you should have directed them to us and we would have seen what their displeasure would have been. But obviously you didn't feel that, just that we should be taking part in that.

Mr Tilson: I will tell you that they had a difficult time.

Mr McCabe: They should have approached us and informed us what the problems were and we would have tried to help those people to the best of our ability. Unfortunately they didn't approach us and there is nothing I can do about the situation presently.

Mr Tilson: I guess the facts speak for themselves, but I would like you to comment on the subject of fairness. If we're talking about a good relationship between an employer and an employee and the fairness of bargaining, is there any reason why there shouldn't also be a ban on employees going out and working in other jobs during a labour dispute?

Mr McCabe: That is up to the employee, as far as I'm concerned.

Mr Tilson: What is your position?

Mr McCabe: We'll defer on that.

Mr Tilson: You don't have one? There is as well a second question that has to do with the fact that the new legislation indicates that bargaining unit employees will now be required to participate in a strike. It's been pointed out that this removes the right of an individual to make a personal decision and continue working, which in some cases is supported by religious beliefs. That legislation does away with those individual rights and all bargaining units will be required to participate in a strike. Do you and your organization have any opinion on that specific position?

Mr McCabe: Are you saying if a person for religious reasons does not feel he or she should participate in a strike?

Mr Tilson: Yes.

Mr McCabe: We're a very democratic society. If the person does not want to participate in the strike, then he doesn't have to come down to the strike lines. It's as simple as that.

Mr Wood: I just want to start off by saying that one of the reasons why this legislation, Bill 40, is being brought forward is to try to reduce some of the conflicts and confrontations in labour-management relations so that things are going to go a little smoother, as well as the fact that there have been no amendments for close to 20 years. The workforce is changing. There's more women, there's more new Canadians in the workforce and things of this kind.

But I also want to cover a question on the use of replacement workers. I don't know if you're aware of it or not, but there is a monument on Highway 11, which is an extension of Yonge Street up through northern Ontario, where rifles were brought out, and when the shooting stopped three people were dead and 8 people ended up in hospital. The hurt and the hard feelings and that go on for years and years.

I just wonder, in your presentation you mentioned that there had been a lot of replacement workers used in your organizing campaigns and things of this kind during strikes. What do you see in the communities or in the workforce after everything has settled? Do the hard feelings, the hurt and the pain continue on for years?

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Mr McCabe: I think that once a worker has had that put on to him by an employer, a worker feels more like a number. He doesn't feel like a person any more. Workers have pride in their work and most of the workers try to express that in how they perform their work. It is their democratic right to withdraw their services, and that's what they do when they withdraw their services during a strike.

When the employer then uses replacement workers to take away that man's livelihood, it leaves a bad taste in the worker's mouth, more than anything else. It not only leaves a bad taste in the worker's mouth; it leaves a bad taste in the worker's family's mouth. The worker's family

starts to hate as well. It's a spinoff effect that goes on not only to his family but to his relatives and so on, because they can see the hardship that it's causing that loved one. So it continues to snowball. It's a snowball effect that affects the entire region and his friends as well, at that point. So it's a spin-off effect from everything.

Mr McGuinty: Mr McCabe, when you recounted those various examples of unfair labour practices, you left us with the distinct impression that employers are inherently bad. I am sure you would agree that there are other examples you could recount of employers acting fairly and properly in the course of a union effort to organize. If we begin with the premise that most people associated with unions have an interest in fairness and fair play, and with the same premise applying to employers, why could we not develop a system whereby we put all of this union organization activity above the table, where we allow reasonable access to employees and where the employer as well is allowed to make his or her pitch and then we have a free vote by secret ballot? Why couldn't we do that?

Mr McCabe: Are you telling me that you are going to allow us on the premises to give our pitch to the employees? I'd welcome it if we were allowed to get on the premises to give our pitch to the employees, because we have nothing to fear by telling the employees the truth. But the problem is we don't have that option of getting on the premises to give our pitch to the employees now, for the workers to hear the truth of what's going on and not just the one-sided version they get on a consistent basis by a management barrage on them day after day once management finds out that there is an organizing drive going on. We don't have access to the workers like the management does, and we would love access to them.

Mr McGuinty: So you'd be open to this idea of a secret ballot if you had reasonable access to the employees?

Mr McCabe: We would be open to an idea of getting access to employees and the employee having the right to make a decision of his own.

Mr Michael D. Harris (Nipissing): Stand up in front of you: It's not a secret ballot right now.

Mr McCabe: I believe the question I'm answering is over here.

The Chair: Is there unanimous consent for Mr Harris to ask a question? No. Mr McCabe, Mr Sheperd, Mr Persaud, I want to thank you for appearing here today on behalf of the United Electrical Workers. Your union has a long and significant history in this country, on this continent, and we appreciate your interest in this legislation and your insightful input into the process today.

I trust you will keep in touch. You and others are welcome to come any day that the committee is sitting here in Toronto or elsewhere. These are public, open hearings and we welcome the public presence.

HUMAN RESOURCES PROFESSIONALS ASSOCIATION OF ONTARIO

The Chair: The next participant is the Human Resources Professionals Association of Ontario. Come forward, seat yourselves in front of a microphone, tell us your

names and your titles and try to give us the last 15 minutes of the half-hour for some discussion and dialogue, which sometimes becomes quite lively and animated.

Mr Brian Smeenk: I have a list of our attendees today, and a brief as well as an executive summary.

The Chair: You're going to have to sit at a mike to be recorded and so the television audience can hear you.

Ms Frances Randle: My name is Frances Randle and I'm president of the Human Resources Professionals Association of Ontario.

HRPAO currently has over 6,000 members representing the human resources profession across Ontario. Our stated mission is to exercise a positive influence on our society through the advocacy of enlightened human resource management practices, legislation and government policy, and to espouse the concept of the intrinsic dignity and worth of the individual and the principle of fairness and equity in the workplace.

As part of our association's ongoing efforts to live our mission, our government affairs committee has submitted a brief in response to the NDP government's recently introduced Bill 40 dealing with Labour Relations Act reform.

HRPAO agrees with the government's stated objective of creating strategic partnerships between business and labour and enhancing cooperation. We are convinced, however, that this cannot be accomplished through the current confrontational, rushed approach to labour policy changes. We can only build a cooperative model of labour relations through a cooperative consensus-building approach to policy development. We have not seen that up to now.

We note that the government is allowing only five weeks in the middle of summer for committee hearings on this bill, which will probably be the most important piece of legislation the Rae government passes during its term. Labour-management relations are too important, we believe, to be handled in such a slam-dunk fashion. Through our government affairs committee, we are participating in the debate by expressing the opinions and concerns of our 6,000-plus members who work with these issues every day.

As our brief contends, the NDP's proposed overhaul of the Labour Relations Act is seriously flawed and it's anticipated to have profound effects on our workplaces and the economy in Ontario.

Bill 40 restricts employees' right to oppose union certification and infringes on the freedom of workers to choose whether to work or strike at their normal jobs. The bill also infringes on the representational rights of part-time workers.

To answer any questions you may have regarding the association's brief, joining me today are Brian Smeenk, chair of a task force on labour law reforms, HRPAAO; Chris Featherstone, executive director, HRPAAO; Paul Statler, registrar, HRPAAO; Carrie Yetman, communications officer, HRPAAO; Sharon Anderson, a member of the task force on labour law reforms; Ross Finlay, member, and president, Technical Service Council, which is a non-profit organization currently consisting of over 160 major corporations in Ontario alone.

With that, I will turn the mike over to Brian to review with you the main points of the brief.

Mr Smeenk: What I propose to do in the time we have this afternoon is to review briefly with you the criteria we used, which we think are objective criteria, to assess Bill 40, and which we would urge upon this committee in assessing Bill 40 as well. Second, I'll review the elements of Bill 40 with which we agree. It may surprise you, but there are some elements of Bill 40 with which we do agree. Third, I'd like to highlight a few of the reasons, with examples, of some of the serious flaws that we see in Bill 40.

In terms of the method of analysis that we used, in order to try to stay away from some of the emotionalism which sometimes characterizes the debate on this legislation, we developed a set of objective criteria in order to analyse the bill. We boiled these criteria down to seven questions, which we have set out at page 5 of our main brief, the main document.

First of all we asked, does the specific proposal respect civil liberties and basic democratic principles such as freedom of choice? Second, will the proposal enhance labour peace in Ontario? Third, will the proposal improve the ability of employers, employees and unions to respond to change in the workplace? Fourth, will the proposal enhance the ability of the parties in the workplace to resolve issues themselves, problem-solving rather than using third-party intervention? Fifth, is the proposal feasible, is it workable, or as Bob White would say, is it doable? Sixth, would the proposal increase the size and cost of government? Seventh, could the issue more effectively be dealt with in other legislation or has it already been dealt with in other legislation?

These are the criteria we arrived at.

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If one agrees that these are sensible criteria, then one would also agree, we think, that if a proposal doesn't fulfil one of these criteria, it doesn't constitute a win-win proposition. In labour relations, in our professional experience in the human resources field, that is what you need to have in order to have successful labour policy or successful labour relations. You need to have solutions which constitute win-win solutions for everybody.

What are some of the things about Bill 40 which we support and which fulfil these criteria? We've set them out in point form at pages 39 and 40 of the main document. They can be lumped into three groups.

First of all, we agree with the government's stated goal, as my colleague Ms Randle has said, of improving labour-management cooperation in Ontario. Accordingly, we agree with those elements of the purpose clause which speak of encouraging cooperative approaches between employers and unions in adapting to changes in the economy and promoting productivity, and those aspects of the purpose clause which talk about things like providing effective methods of dispute resolution and fair methods of dispute resolution. So that's the first group of proposals we agree with.

Second, we agree with those proposals which make mechanical improvements to make the Ontario Labour Relations Board and the arbitration system work more effectively. Anything which can make the adjudication processes more effective, but still fair, should be done.

Third, we support the creation of the proposed work organization and partnership development service. These kinds of positive win-win proposals or initiatives are welcome, and we submit this kind of thing should be the focus of labour policy reform.

On the other hand, we've concluded that unfortunately the vast majority of the proposals in Bill 40 fail to meet the criteria we established, those seven objective criteria I listed for you. Our findings are summarized in the executive summary. I hope all of the committee members received a copy of the executive/membership summary of HRPAA's position on Bill 40.

On the front page you have some of the key findings, followed in the following pages with some of the specific examples with fact scenarios of situations which will not fulfil—

Ms Randle: There should have been two of these documents. I think most of you are looking at the wrong one. It's not the comparison but it's the executive/membership summary. Was that not distributed?

Mr Smeenk: It's actually white.

Ms Randle: The white copy.

Mr Smeenk: Our first conclusion, as you can see on the front page, is that Bill 40 involves massive infringements on the rights and freedoms of Ontario workers, or to put it another way, unions' powers and rights are being increased at the expense of the rights of Ontario's workers. We've provided a number of scenarios in the executive summary and throughout the brief which we think are highly plausible under Bill 40 which explain why this is so.

The first one, which you see on the second page of the executive summary, deals with the representational rights of part-time workers, which we suggest to you are being infringed in this bill. Under the current law, part-time workers have the right to separate representation in separate bargaining units, and this is important because the interests of part-time workers are often quite distinct and often in conflict with those of full-time workers. They're in conflict over things like hours of work and wages versus benefits and the whole collective bargaining regime.

Under Bill 40, a union could submerge the part-time group's interests under the weight of the full-time majority. If the full-time employees make up the majority, the union could certify the entire group, even if none of the part-time employees was in support of the union.

In the first scenario in our executive summary we've used an example where you have 50 employees; 30 full-time, 20 part-time. If 28 of the full-time employees join the union, and none of the part-time employees, the part-time employees would still be represented by the union, even though they were unanimously opposed. We think that's wrong.

Furthermore, part-time employees' interests could be overridden after certification. The union could organize the two bargaining units separately and then, later on, ask the labour board to combine them if they represent both units with the same employer. They could do that even if the part-time employees were adamantly opposed. We don't think that Bill 40 advances the interests of part-time workers at all.

The second area where Bill 40 infringes workers' rights is in removing the freedom of choice regarding strikes. Currently employees have the freedom of choice as to whether to strike when the union leadership calls a strike. This is an essential right which workers have to protect their own interests. It's an individual right to decide whether to strike or work. If, as sometimes happens, employees feel that their union leaders are out of touch, are acting unreasonably, or if they feel that they simply cannot afford to strike or they simply don't support the union's position on philosophical grounds, they can vote with their feet and stay at or return to work.

Even if that right is not often exercised, and we know it's not, the existence of that right is a powerful safeguard to ensure that the union does what the employees want, not what some union bosses in Washington or somewhere else want. They have the freedom to work if they choose to, whether that's for economic or philosophical reasons.

This fundamental freedom of choice would be removed under this bill as long as the union at some point in time had a strike vote and got a 60% majority. But under that voting procedure there's no minimum quorum, there's no requirement that the employer's last offer be put to a vote, there are no rules regarding how long before the strike the vote takes place—it could be months before the strike deadline or the culmination of bargaining—there's no time limit on how long the union would maintain the right to force the employees to stay out on strike without holding a fresh vote and there's no requirement that the union exercise this power reasonably.

What Bill 40 is doing is removing this very basic democratic freedom to choose whether to work or to strike and removing a key safeguard which employees now have for the protection of their own rights. The unions are gaining a tremendous amount of power—really unbridled power—and the workers are losing their rights.

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A third way that workers' rights are being infringed upon is in the area of freedom of choice regarding unionization. In our submission, that's being done in a number of ways: first of all, the purpose clause, whereby one of the purposes is to facilitate the ability of employees to be represented by unions.

Nothing is said in the proposed purpose clause regarding the protection of freedom of choice regarding the facilitation or the right to remain non-union, so the bill builds in an explicit bias which the labour board will be required to implement. The overriding concern in our submission, in a free and democratic society, should be the protection of workers' free and democratic choice, the right of self-determination.

The other way the workers' rights of self-determination are being infringed upon is through the certification procedures. We're taking away, in Bill 40, the right to revoke their membership once the union has applied to the labour board. We're taking away their right to oppose by way of petition and we're taking away the small safeguard of the \$1 minimum payment. These proposals collectively remove any remaining safeguards to ensure that the true wishes of the employees will be known.

Your political parties all have membership fees. I believe in fact that the government party's membership fee is the highest among the three. I suggest that you ask yourself, would you be prepared to have no membership fees in your parties so that all you needed to join was a signed membership card? Would you, moreover, not only do away with membership fees but make party membership irrevocable for a certain period of time, perhaps for the duration of the vote of a leadership campaign? Would you agree in your party to decide anything based simply on unpaid membership cards that certain candidates or groups submit? I suspect you wouldn't run your party that way. None of you would, yet that is exactly what Bill 40 is suggesting in union certification.

Certification would be based solely on the number of cards submitted: no minimum payment, no right to revoke after the application, no right to change one's mind, no way of knowing whether people knew what they signed and no way of knowing what they were told or what promises or inducements were made. This is simply not a reliable process. It's not fair to employees or employers.

Bill 40 really says, it seems to us: "We don't care about democratic choice. We don't care about due process or ensuring that the true wishes of the employees are known. We just want to make it easier for unions to be certified." We ask you, if you would not run those standards and apply them to your own parties, why would you apply them to the workers of Ontario?

The second major point we make in our brief is that Bill 40 is likely to result in more strikes and more labour strife in Ontario. Why do we say that? First of all, if I could use an analogy, saying that this legislation will create labour peace is sort of like Canada's peacekeepers going into a conflict and giving more ammunition to one of the sides—not only more weapons, but bigger and better weapons—and then saying, "Okay, now we want you folks to get along," and when the other side protests, saying: "Stop complaining. Try to be more constructive. Your complaining is irrational and it's getting in the way of lasting peace."

You cannot create conditions for peace by giving one of the disputing parties more weapons and better weapons to use against the other party in the next battle. One shouldn't be surprised if the other party finds that to be an unacceptable solution to peacekeeping and one shouldn't be surprised if the other party then questions the neutrality of the purported peacekeeper.

Moreover, since this replacement worker so-called proposal is patterned after the Quebec legislation, we found it instructive to compare Ontario's and Quebec's strike records. As you can see on the front page of our executive summary,

in the last six years Quebec has had more than double the number of workers involved in strikes than Ontario. Since 1976, when the Quebec legislation was introduced, it has accounted for 50% more of Canada's striking employees than Ontario. These statistics are in more detail, I should add, in appendix B of our main brief. Those statistics exist even though Quebec's population is of course much smaller than Ontario's.

In short, ladies and gentlemen, Ontario's strike record is much better than Quebec's. Theirs is not a system which we think Ontario should emulate.

Finally, we note that if Bill 40 accomplishes the objective of increasing union membership in Ontario, one can reasonably expect that there will be a commensurate increase in strike activity. Any way you look at it, Bill 40 will not enhance labour peace.

In conclusion, this bill, taken together, in our submission, is the most far-reaching labour legislation in North America in the last 40 years. It goes further than anything the NDP government did in British Columbia or the Péquiste government did in Quebec. It requires more, in our submission, as Ms Randle said at the outset, than five weeks of committee hearings during the summer vacation.

One cannot build cooperation in the workplace, which in our profession is what our members are all about, or on an Ontario-wide level between labour and management through a confrontational, hurried-up method of legislative policymaking. Ontario badly needs teamwork, but this is not the way to accomplish it.

We suggest instead a tripartite approach to consensus building involving government, labour and management, not unlike what the federal government did with the Woods task force some 20 years ago. They did it successfully. Ontario needs to build a consensus regarding labour-management relations. We ask this government to help to build it, not to avoid it. Those are our comments.

The Chair: Thank you. Mr Huget, one question.

Mr Huget: Thank you for a very interesting presentation. I certainly will read your full brief in detail. I haven't had the opportunity to do that.

I have spent a few minutes looking at the executive summary and I must say that the scenarios you raise in all seven instances certainly don't reflect any experience I've had in real life. Perhaps you have more information on these specific issues than I do, but it certainly hasn't been my experience.

The other thing I find interesting in all seven of the scenarios is the light in which workers in workers' organizations are portrayed. They are portrayed in all seven scenarios exactly the same, as being some kind of a subversive, coercive group of people whose agenda is certainly not to enhance productivity. I don't believe that is the case either.

The purpose of the government's legislation is indeed to enhance cooperation and we feel it will do that. I assume the companies that you work for or represent have both union and non-union employees. I assume also that there are some cooperative relationships with those groups now and I guess I would like your views on what specific

parts of this legislation would destroy those cooperative relationships you have now with your union and non-union workers. I'd like you to be specific, please.

Mr Smeenk: The list is too long to give you a short answer to that, Mr Huget. We list them in the brief. The proposals which present the greatest concern are the restrictions on the rights of employees to work during a strike and the various proposals which increase third-party intervention rather than work to decrease third-party intervention. I'm thinking there of things like first-contract arbitration on demand, increasing the arbitration process, creating more situations in which parties will go to the labour relations board rather than solve problems themselves. Those kinds of proposals are the kinds of proposals which we submit will not enhance cooperation but rather will get in the way of cooperation.

1700

Mr Offer: Thank you for your presentation. I think it's really at the very end of your submission where you have advocated the establishment of a tripartite committee. It would seem to me that when one advocates that, as you have, you're also indicating that you're not ruling out that change is necessary with respect to labour relations, but rather that the approach to how that is to be effected has got to be different than the approach the government has used to date.

On that basis, has that position been made to the government earlier on than this presentation, and if so, has there been a response by the government as to that course of action?

Mr Smeenk: Yes, those submissions have been made repeatedly by us to the government, and no, there's never been any response. We made those submissions at the very beginning of the process, and we've attached to the brief some of the correspondence between our president and Premier Rae and Minister Mackenzie when the Burkett committee just got under way. We repeated our call for a tripartite body during the discussion paper phase and again, subsequent to that, in a letter to Premier Rae.

Mr Tilson: Thank you for your presentation. It was very thought provoking, and I hope Mr Mackenzie will take time to read it. I too will be spending some time in reading your report in more detail.

I only have one comment to make, because I agree with almost all of what you say. The only question I raise is that which you talked about, the purpose clause, and that you appear to be in favour of it. I take a different approach because I believe what the government should have been doing is to set up a clearer set of rules for certification, for forming a union: a better set of rules or a clearer set of rules, a fairer set of rules.

Instead, when you read section 5 of the bill, the NDP government is saying that the purpose of the bill is to encourage the process of collective bargaining, and of course that purpose will be taken into consideration by the Ontario Labour Relations Board when it exercises those certain discretionary matters.

It is quite a major change, and I say—I would like your comments on this—that the real purpose of this bill is that

employees ought to be represented by trade unions, that they must be represented by trade unions, that the trade unions are the only ones that can solve their problems. It is in the interests of organized labour that this entire bill has been put forward, which makes it easier to organize and all the other matters that you have expressed your concern with. That's my interpretation of the purpose clause, which differs slightly from yours—a little bit more extreme perhaps.

Mr Smeenk: Thank you for your question. I hope I haven't misled you in our comments on the purpose clause. We did not mean to leave the impression that we agreed with the purpose clause in general; rather, what we were saying is there were certain elements in the purpose clause which we could support, and those elements were the promotion of harmonious labour relations, the extension of cooperative approaches between employers and trade unions in adapting to change and enhancing productivity, and effective, fair and expeditious methods of dispute resolution. Those elements we can support.

We are quite critical of the other aspects of the purpose clause such as you alluded to, and also the clause that talks about facilitating the right of employees to join rather than talking about protection of freedom of choice.

The Chair: Mr Smeenk, Ms Randle, Mr Finlay and Ms Featherstone, we want to thank you for appearing here today on behalf of the Human Resources Professionals Association of Ontario. You've made an important contribution. The brief you've provided is a well organized one which I'm sure all members of the committee will read carefully. We thank you very much for taking the time out of your day to come here. We trust you'll be keeping in touch with some or all of the members of the committee or other MPPs, and you're welcome of course to return to observe what's happening here in the committee any time we're sitting.

Mr Smeenk: Can I just add that if the committee has any follow-up, we would certainly welcome any follow-up questions at a later date or be quite happy to provide any advice or recommendations or resources we can.

The Chair: Thank you kindly. We appreciate that. Thank you, people.

We have one small matter to deal with. Before that, though, we want to say hello to the lord mayor of Niagara-on-the-Lake, Mr Dietsch. Hello, Mr Dietsch, good to see you here—Mike Dietsch, of course, former MPP for St Catharines-Brock.

Mr Tilson: As indicated, the clerk has distributed the requests of organizations as to July 30. I have no idea how many that is; I suspect it's somewhere between 900 and 1,000. Maybe he can clarify that or indeed expand as to how many organizations or individuals have applied to date. One of the questions I and I'm sure other members of the committee have is, when we cover delegations—I don't know how many we're covering today; 15 delegations, or whatever—do we have a set of guidelines? Has the committee or the subcommittee set forward a set of guidelines as to who is to speak and who is not to speak?

The Chair: Yes, and that was as a result of a subcommittee decision. I quite frankly appreciate the assistance

the clerk's office has provided in setting up these lists yesterday and today for the balance of this week and next week. You should know, however, that a fax communication went out, a memo, to all members of the committee indicating that there were some vacant slots kept vacant so that if members either of the committee or elsewhere had some groups or individuals who they felt strongly about participating, they could provide input. We're waiting for input in that regard, which you can deliver to the clerk outside of the committee.

Mr Tilson: That's very helpful. Obviously the opposition has made it quite clear that five weeks is insufficient and the government has said, "That's very fine, thank you." This list is proving, I believe, that the opposition is correct. Here's a whole page of various locals from the United Steelworkers of America. What do we tell groups that want to be heard but cannot be heard?

The Chair: There are 1,100-plus who have indicated an interest in participating in the hearings. Mr Offer, you wanted to comment?

Mr Offer: No. When you're finished with Mr Tilson, I have a further comment I'd like to make.

The Chair: I've been inviting people to contact any one or all of the three House leaders in view of the fact that it was the three House leaders who determined the amount of time the committee sits.

Mr Tilson: Oh, really.

The Chair: That's what I've been doing. That's just simply my approach to the matter. Other people may have more creative responses than mine.

Mr Offer: I would like you, as the Chair, to rule as to whether a motion is in order at this point in time where we as a committee make a formal request to the House leaders, notwithstanding the motion that has already been placed with the Legislature, that as a result of the response to the newspaper articles for submissions—the response has been overwhelming; thousands of people wish to be heard by this committee on this bill—we as a committee unanimously request that the House leaders extend the time this committee can sit for the purpose of hearing those people who have so requested.

The Chair: Are you making that motion?

Mr Offer: I am.

Ms Murdock: I'm not seconding it.

The Chair: There's no need for a seconder. I'm looking to see if there's any response to the fact that motion has been put on the floor.

Mr Tilson: Agreed.

Mr Turnbull: Agreed.

The Chair: No, I'm not looking for agreement. There's no need for you to ask me whether it's in order. Nobody is raising an objection and I don't find anything inherently out of order about it. So yes, the motion is on the floor. Now, can I suggest this. We've had a cancellation this evening, which means the last presentation is at 8 o'clock rather than 8:30. Do you want to debate that motion now or do you want to debate it at 8:30, which is a

half-hour slot that has been opened up as a result of a cancellation?

Mr Offer: I think that's a wise suggestion. We are breaking now, and I would not be in any way concerned with the debate taking place later on this evening as opposed to now. I think it's an important matter and I hope, upon reflection, all members of the committee will recognize there has been a great deal of interest in the bill both for and against. People are taking the opportunity to submit their requests to be heard and my motion is asking this

committee to request from the House leaders extra time to sit to hear those people.

The Chair: Which is what you can argue at 8:30, and you can prepare a written copy of the motion in view of the fact that the opposition parties made much ado out of the absence of a written copy of a motion made some short time ago by government members.

We are recessing then until 6:30.

The committee recessed at 1712.

EVENING SITTING

The committee resumed at 1836.

COUNCIL OF ONTARIO
CONSTRUCTION ASSOCIATIONS

The Chair: It's 6:36 pm and we're going to resume. We ought to have resumed at 6:30, but the doors were locked and whoever was responsible for unlocking them didn't. My apologies to people who had to wait. I suppose, among other things, that confirms what so many people suspect about government.

In any event, the first participant is the Council of Ontario Construction Associations. The people involved in that organization, please come forward. Seat yourselves before mikes. Tell us your names and your position with your organization. Try to save the last 15 minutes at least of the 30-minute time slot for questions and dialogue. Gentlemen.

Dr David Surplis: My name is David Surplis, and we've met. I am president of the Council of Ontario Construction Associations. The membership list is in the back of your brief here. With me is Bill O'Riordan, chair of our industry committee on labour legislation, which is operated in conjunction with the employer bargaining agency in Ontario, the Construction Employers Coordinating Council of Ontario, or CECCO.

We're grateful for this opportunity to talk directly to the committee, because it's our hope that maybe, just maybe, somebody here will realize that there is a genuine tragedy being played out in the construction industry and it is being buried in all the partisan bluster over Bill 40.

We implore you to listen to these facts as we begin to discuss the bill: As of May 1992, there were over 70,000 construction workers unemployed in Ontario. That's the whole population of the city of Guelph, roughly. As of May as well, the unemployment rate in construction was 22.2%, or double the provincial average. Private and public construction investment in Ontario has dropped from \$32.8 billion in 1990 to \$28.5 billion for 1992. You must all know there are almost no major projects being built in your ridings, or so few you can count them on one hand. We have lost member companies by the hundreds and many more will not last past next winter. In fact, we just heard last week that the banks have closed in on a major construction company, placing hundreds more jobs in jeopardy.

We grant that there are many reasons for the current state in our field, but there is no disputing the fact that the construction industry in Ontario is ailing terribly. Please listen to our comments on Bill 40 in the light of those facts, because what I want to tell you about the development of Bill 40 is that the thousands of men and women who provide employment, or try to provide employment, in the construction industry are profoundly worried, sceptical and insulted by the process.

We are worried, exceedingly worried, about our industry. Vacancy rates are extremely high, especially in the industrial and commercial sectors, mainly in Toronto, of

course, but elsewhere as well. Until that excess inventory is taken up, which would require a real boom, it is clear that at the moment the only real job creation can be in the institutional sector. But because the provincial government has had to keep capital spending at the same level as previous years, roughly \$3.9 billion, Mr Laughren would have to invest an additional \$4 billion per year to get our industry back to even 7% unemployment. COCA is attempting to help the Treasurer develop innovative ways to finance projects, but until such a solution can be found, there's no way that the government can even find, never mind invest, a further \$4 billion per year.

The answer to our problem, as we've said over and over, is crystal clear: For construction to have a meaningful recovery, there must be a tremendous resurgence of private investment in productive capacity.

What we want this committee, and particularly the government members, to realize is that while union leaders and NDP partisans seem more interested in shooting the messenger, COCA has maintained a single, consistent message that is based on jobs, not on politics. That message is this: When you realize the devastating unemployment and failure rates in construction, when you see that the prospects for recovery are entirely dependent upon private sector investment, you cannot escape or deny the conclusion that anything that scares away investors will doom the construction industry to many more years of high unemployment and social and economic turmoil.

As I said, we're worried, sceptical and insulted. Our scepticism centres on the brick wall known as Bill 40. From the time of the release of the Burkett report, construction has voiced concerns about the principles that underlie it on the basis of jobs, but since the release of the report and the leaked cabinet document—you know the history—there hasn't been a single person in the government who has sat down and discussed our fears with us.

We feel insulted because despite the fact that unemployment is bringing our industry to its knees, everything we say about our fears is twisted into accusations of political manoeuvring. The most bizarre reaction of all in fact surfaced just last Friday when a labour union leader actually connected business worries about job loss and treason. That's the kind of nonsense this bill has spawned, and the government is not only doing nothing about it, in our opinion, it is making it worse. I have, for example, two newsletters from NDP headquarters on Main Street and Gerrard which indicate that the party has a kit ready to help partisans jam our fax and telephone lines, among other things.

The minister says this legislation is designed to enhance cooperation between organized labour and management. Why then has he never arranged for us to sit down with representatives of labour to discuss anything? Why is everything being done through the media—Ontario Federation of Labour ads, and of course, we must admit, our ads as well—when a room at the Macdonald Block can be had for next to nothing?

As a responsible public organization, COCA has participated in every step of this legislative process. We're proud of the fact that we've been able to contribute a lot—we think a lot of interesting data, research and so on—which we started out compiling from our members' own considerable experience in economics and industrial relations. When that expertise fell short, we commissioned independent information from lawyers, economists, accountants and public opinion research companies. You all know about the Environics polls.

What seems to have been forgotten here is that COCA—and we underscore this, again and again—has no history as a politically partisan organization. Every bit of our research was undertaken because we are genuinely worried about whether the principles and particular sections of what is now Bill 40 will help or harm our industry.

One part of our research deserves a quick comment here because it focuses so much attention on our frustration. When labour's all-time wish list was made public by the Burkett report, we commissioned Ernst and Young to survey 300 chief executives of corporate bodies inside and outside Ontario to see what factors influenced their investment decisions and what effect implementing the labour wish list would have. They indicated that they would have to cut back on investment, employment and so on. But Mr Mackenzie came to us immediately and attacked our study, saying that the labour wish list would certainly not be the basis for government legislation and that we should wait to see what he was actually proposing. Well, good advice; we did that. We then commissioned Ernst and Young to do a study of the government's study paper. Of course, because it included fewer scary items than might have been anticipated, the CEOs had a reduced reaction to it, but still predicted around 295,000 jobs lost and \$8.8 billion in investment.

The government and union leaders have gone to almost any lengths to discredit our study, but there's one very salient point we want to bring out, and that is this: The CEOs from outside Ontario, primarily in the United States, of course, were not told that the jurisdiction under study was Ontario, and they still said they wouldn't invest in any jurisdiction like it. In other words, they had no axe to grind. They weren't after the NDP in Ontario. They just said they wouldn't invest in any jurisdiction that looked like that.

Whether you're pro-union or anti-union, and it doesn't matter to us, if business leaders are given a choice between almost identical jurisdictions—workforce, education etc—they will choose the jurisdiction with less onerous and punitive labour laws. That's a fact, just a plain fact that's come out of our research.

As I said earlier, the union leader who talked of treason says our figures are unfounded, but neither he nor anyone else on the government side has disproved our figures or offered any of their own.

Let me conclude my part by reminding you once again, please, that the construction industry is in terrible shape. Thousands and thousands of your neighbours and mine are out of work, looking for work in our industry and they can't find it. But every time we raise our concerns, temper-

ately, intemperately, quietly, publicly or in any fashion whatsoever, we are told, in the words of the NDP newsletter, to "Back off, eh." That's a pretty cute political slogan, but it is a complete insult to the men and women who try to provide jobs in the construction industry and the tens of thousands of workers with no prospect for work.

Now Mr O'Riordan will outline a few of our specific concerns about Bill 40.

Mr J. W. O'Riordan: Mr Surplis has spoken about flaws in the legislative and political process as they relate to this legislation. I would now like to direct your attention to some of the serious flaws that will be created in the labour-management relations process if Bill 40 becomes law.

I've been a regular participant in that process for over 25 years and I am presently the corporate director of industrial relations for St Mary's Cement Corp. There are two aspects of the bill I would like to comment upon. With the limited time we have, obviously I have to make very general statements, and we could speak volumes, of course, if we had the time.

There are two aspects of the bill, however, generally speaking, that we can look at. One is organizing and certification and the other is the collective bargaining process itself. Also important here is a third element, and that's what I call the quasi-judicial system represented by the Ontario Labour Relations Board, which oversees the activities of both areas. The new legislation introduces a bias in each of these components towards labour and makes government a partner with labour in pursuing labour's goals. That's clearly evident.

As David Surplis has said, our industry, like many, is totally dependent upon investors. In order for those investors to have faith in the Ontario economy, they must see a balance in labour-management relations. Investors are risk-takers who provide the capital for our growth and they must be made welcome in Ontario. There is much in this bill that does not make investors feel welcome. It makes unions feel welcome instead, and as far as I know, unions don't create a lot of jobs.

Let me turn your attention to, as I call it, that quasi-judicial system, the Ontario Labour Relations Board process, driven now by a new purpose clause. The role of the board should be as a neutral referee which interprets a simple set of even-handed rules, assuring that the processes of certification and collective bargaining are administered fairly. That's really been their role in the past and should be in the future. The board should not be viewed as the proactive arm of the government, going beyond the process into the content and substance of both certification and bargaining to further the interests of organized labour.

1850

That is what Bill 40 envisions. We know that changing the neutrality of the OLRB is a primary objective of the union movement. The Ontario Federation of Labour, in its publication *It's Time*, tells its members that Bill 40 will "strengthen the Ontario Labour Relations Board to act on behalf of working people."

That statement shows a fundamental flaw in what the government is trying to do. The board should not be working on behalf of anyone or anything. They should be neutral and evenhanded and above all, fair. The board's only role is to make sure the parties follow the rules. Let the parties determine the content of collective bargaining, or even certification, for that matter. If I can use a metaphor, when was the last time you saw an umpire pinch-hit for one of the ball teams on the field? That's really when Joe Carter looks behind him, and when he sees an Oakland A's hat on the umpire I'm sure he gets disturbed.

Let me turn for a moment to organizing and the certification progress. Management in general has been roundly criticized for appearing to be bitterly opposed to the workers' right to organize. I'd like to dispel that myth right now. What bothers management is not the democratic right to organize but the fact that organizing, under this bill, is a one-way street. Once workers join a union, and even if they change their decision, it appears to be a lifetime membership. It is almost impossible to get out of a union, even when a worker or a collection of workers no longer feel they need or want one.

Management is not opposed to democratic organizing and certification, but it should be just as easy to get out of a union as to get into one. In other words, and this is the gist of what we are saying, the language of decertification should mirror the language of certification. So if you make any change in the certification language, make the equal and opposite language to mirror decertification. As far as organizing is concerned, no union should have more rights than any other private citizen.

For investors to see a balance, they might look for such things as a fair system under which management would have the unfettered right to speak openly to employees during an organizing drive. Now they're frightened to. They might also look for a 72-hour revocation right on signed cards, just as in our consumer legislation. I don't see any difference. They might also look for an automatic secret ballot vote on all certification applications. That's part of our democratic process. In union raiding or displacement applications, "no union" should be a choice on the ballot. All these items, of course, are missing from Bill 40.

Turning now to collective bargaining, let me give you some insight into what typically happens during the collective bargaining process, particularly at that magical eleventh hour when both parties perhaps are tired but are coming to the end. A senior mediator from the Ministry of Labour walks into the company's caucus room and says to me and my company committee that there are still several items outstanding which both parties refuse to move on. The mediator informs me that the union is prepared to take a strike and that it will be a lengthy one if these issues are not resolved. The same mediator walks across the hall to the union's committee room and tells the union that management feels strongly about the outstanding issues and is prepared to take a strike and operate the plant if the issues cannot be resolved.

It is at this time that both the company and the union normally recognize that a strike would create a lose-lose

situation. Everyone would suffer and no one would win anything. Both parties start working towards a settlement without a strike, reviewing their positions and seeking compromises that balance the interests of both parties in order to get a settlement.

Let's stop now. Let's put Bill 40 into law and let's take the same scenario and see what happens. The mediator comes to the company caucus room. There are still a number of outstanding items—the same ones. The mediator tells us the union is prepared to strike. However, the mediator now adds the comment that the union knows the company would not be in a position to operate during that strike. If the company is not willing to compromise immediately, it will be shut down. The mediator then strolls across the hall to the union caucus room and delivers the message that he has told the company what the union's position is. There is nothing the mediator can say to the union which can put pressure on it. That old comment he made originally is no longer there.

The union now views the situation as win-win. If there's a strike, they will win the demands because the company cannot afford to hold out very long without the ability to operate. Of course, if the company accedes to the union demands, there will not be a strike. Over a period of time, this imbalance leads to excessive settlements or costly strikes which permanently weaken the competitiveness of the company. Over a period of years, this can be detrimental not only to the company but to the long-range security of the employees as well. Frankly, when I talk quietly to some very good union people, away from the political scene, they agree with me.

There's an old saw in collective bargaining that says the ability and willingness to take a strike or lockout will prevent them, because of the balance of power that's implied. This bill totally destroys that balance. This conclusion, by the way, is not lost on investors who have the choice to invest in jurisdictions where there is a balance.

A comment on first contract arbitration: Investors have asked us, "Where is the incentive of the union to negotiate where the union is guaranteed an imposed settlement by an arbitrator without even the risk of a strike?" The only obligation of the union is to wait 30 days.

A final comment on this 60% vote necessary to trigger the replacement worker prohibitions: Anyone who practises labour relations and is involved in contract negotiations knows fully well that a union typically gets its strike mandate long before negotiations are finished. Sometimes the strike mandate vote is taken before formal negotiations even begin, as a show of solidarity. Well and good. The suggestion that this was a huge change in the legislation which corrects the imbalance, prevents the union leaders from hijacking the decision-making of the membership and gives legitimacy to banning employees from working during a strike is a sad joke. To be kind, I hope the government proposal comes out of ignorance rather than cynicism.

It is, therefore, my considered opinion that if Bill 40 is passed in its present form, Ontario will become a labour relations battle ground and the damage to the economy will be serious.

Of course, this government is democratically elected and is perfectly entitled to continue to tell the business community to get lost. Let us not, however, be surprised when investors take the advice literally and create jobs elsewhere, as Statistics Canada shows they have been doing; and let's not be surprised when those of us in the construction industry whose jobs and companies are being destroyed because investors are leaving Ontario get very angry at the government whose policies are driving those investors away.

We would like to see some understanding by government members that passing the most pro-union labour laws in North America is a major and distinct disincentive to investment and job creation. Whether or not you think this bill will be popular with unionists, it is out of step with labour laws in every jurisdiction that we compete with for those very jobs and for the investment.

I would like to suggest that members of this committee call witnesses from, say, the state of Michigan. Outline the provisions of Bill 40 in the best possible light, then ask those investors what they think. We understand, by the way, that a meeting just like that has already taken place and that the message from the investors was entirely negative. But don't listen to our side only. Ask the government about that meeting. Ask the investors yourselves.

We are here because we hope the members of this committee, maybe even those of you who support the government that drafted this legislation, will have the courage to find out what the impact of this legislation will be. We hope you will have the strength and the independence and the good judgement to recognize that Ontario is not an island and that we cannot create a union leader's Nirvana here without paying a huge price in the form of lost investment and jobs.

Please look at the economic impact of this bill. Commission your own study. That could be undertaken, by the way, concurrently with these hearings, and please get the facts before writing your report. Use this opportunity to start restoring Ontario's image as a good place to invest and to create jobs. Use this opportunity to tell your constituents that as their member of the Legislature, you care about protecting jobs as much as they do. Thank you, Mr Chairman.

The Chair: Thank you, sir. Mr Offer, one question.

Mr Offer: I have a very short period of time, unfortunately. However, we cannot let this go without asking questions on the potential impact of this bill.

You're aware, as we are all aware, that the government has not done any impact study and that it has said an impact study cannot be done. You and your group have been the driving force behind two studies as to what the changes to the Labour Relations Act might be. I would like to hear from you whether there is the possibility of conducting a sector-by-sector analysis of the bill in the area of its impact, and I could not let this go without the point you made of a meeting that took place. I know you alluded to that in your presentation. I wonder if, in response to my question, you could also share with us what that meeting was.

Mr O'Riordan: This is second hand, but my understanding is that the Ministry of Labour, through the council in Detroit, asked the federal government to arrange a meeting of prominent investors in the Detroit area, which the deputy minister attended, I think, around June 8, at which time—of course, this was shortly after the bill was promulgated—he gave them a rundown of Bill 40 and told them what a wonderful document it was and not to be afraid. My understanding—and of course this is second hand—is that the investors told him he was absolutely crazy to put something like this into legislation and that it would be very negative in terms of their view of whether they want to continue to invest in Ontario.

Again, because this was a private meeting my information is second hand, but I would suggest that, because this committee is founded on the principle of investigating, you carry it further. I think we should be asking the government and the deputy minister exactly what did happen at that meeting.

1900

Mr Turnbull: First of all, I'd like to put a motion on the table that in fact the documents, the memoranda which come forth from that meeting, should be brought to this committee for consideration.

The Chair: You're perfectly entitled to make a motion. There's a motion on the floor already, though, but we can deal with that later in the evening.

Mr Turnbull: Mr Surplis, as you've alluded to, there have been tremendous amounts of energy expended by the government in attacking the study you commissioned from Ernst and Young, which suggests that 295,000 jobs would be lost to this province as a result of this legislation and approximately \$8.8 billion in foregone investment.

The problem occurs in that the government suggests there would be two heroic assumptions required in building its own model. Could you tell me, from your business experience, is there any major corporation you would deal with—one of the companies within your organization—that would undertake major development without doing a thorough study of the economic costs of it?

Dr Surplis: Certainly not. Some things are trickier than others. Obviously, you can do market surveys and everything when you're putting up a commercial building. Those are pretty hard and dried figures. You can depend on those.

I think what you're alluding to, and certainly what the minister was alluding to, is the element—and we grant there's an element—of concern about the legislation expressed by the CEOs questioned under the Ernst and Young study. But we grant that while there may have been some desire on the part of one or two or who knows how many employers to have a go at the legislation and make the NDP look bad, the point is there is an element. They know they couldn't be competitive and that those answers are built on economics, not politics.

Then, if you add what I said earlier, the companies outside Ontario that weren't even told it was Ontario have no axe to grind. "This is how we invest our money, and we

don't go to places that shut down companies the minute there's a strike etc."

Mr Turnbull: So there was no bias built into the study at all.

Dr Surplis: In this study—and Ernst and Young admit it—there was the possibility of a bias in the strength of the answers, not in the direction of the answers, in the hope of dissuading the government or embarrassing the government or whatever, but the direction of the answers was away from investing and hiring in Ontario.

Mr Turnbull: Can I infer from this—I don't know what the answer is—that there was probably a range of job losses and foregone investment opportunities and that the number presented in the study probably represented the average figure that you came up with?

Dr Surplis: Well, it was the amalgamation. They took 300 respondents. They said there was a 16% reduction in jobs. That was blown up to the industries they represented as a whole, and that came to 295,000.

Ms Murdock: It's good to see you again. I know you promised faithfully the last time I saw you that you were going to make sure you were going to have a new study done. You've certainly lived up to your promise. Just to refresh my memory because I can't remember, in terms of your membership, how much is unionized and how much is non-unionized?

Dr Surplis: Approximately 45% is unionized; obviously, 55% is not.

Ms Murdock: In terms of that—and actually it hasn't been raised in the past two days; I think this is the first time in terms of the western European and Japanese experience—first of all, they have a strong economy in comparison, despite the fact they've gone through a recession similar to ours, and also the whole social equity aspects of their legislation, and they have strong labour legislation. Obviously I'm coming from a totally different philosophy than you are, I make no bones about that, but how do you jibe that?

I am having trouble where it works, where it's shown to be working, where there aren't any difficulties or seemingly. Obviously, everything has problems, but labour and strong labour legislation doesn't seem to be the cause and I'm wondering how you jibe that with your argument.

Dr Surplis: One very quick answer, and I know Bill would like to make a comment, but Japan, Germany, Sweden and so on are countries. Ontario is not. We cannot do things here in Ontario solely unto ourselves. We have competitors who can draw away fast as anything. We're not a country. That's the major difference.

They have enormous powers in those countries whereby the unions and management and government have control over all kinds of things that

we couldn't possibly have here in Ontario because we're a province and not a federal government etc. Anyway, that to me is the fundamental distinction. They are countries and Ontario is not.

Did you want to add to that?

Mr O'Riordan: Yes, I'd like to. Again, Ms Murdock, I guess we could speak volumes on it, but if you take Germany, for instance, which is likely the strongest and likely the closest to our own cultural background, you have the Bundesbank, you have several very large unions and you have a very large government that sit down and literally the Bundesbank, which is their central bank, says, "The inflation rate this year will 1.6%. Therefore, we can give 1.43% in wages this year," and the unions for the most part say, "Yeah, we agree with that," and the government facilitates or encourages that. From that central body goes out, more or less, the pattern which the nation follows.

But if you ever tried to do that you'd have to take the Canadian Labour Congress—and it has a lot of power over local unions I understand; pardon me, if my tongue's in my cheek—the Bank of Canada—and I can just imagine some of the problems it might have—and we'd take Brian Mulroney and we'd sit them down. Can you imagine taking that pattern of Germany and imposing it on Canada and trying to spread it across the country? No.

I think the point to be made is—we're into pop sociology here—we are a different culture. There's a spirit of individualism in this country that is quite different from the European pattern, and for that matter the Japanese. I'm not saying the German pattern is wrong. For them it is good and it's been extremely successful. There's a lot to learn from it, but we can't take whole systems and put them over a tire like a patch.

The Chair: Gentlemen, I want to tell you on behalf of the committee that we're grateful to you, Mr Surplis, and to you, Mr O'Riordan, for coming here this evening on behalf of the Council of Ontario Construction Associations. It made a valuable contribution and the work in preparing this brief and submission is acknowledged. I trust you'll be keeping in touch and monitoring the progress of the bill through this committee, and then into the Legislature. We welcome you back in further communication. Take care gentlemen.

1910

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353

The Chair: The International Brotherhood of Electrical Workers, Local 353. We have 30 minutes, gentlemen. I'd like to know your names, your titles, if any. Please try to save the latter half for questions and dialogue.

Mr Joe Fashion: We'll be brief.

The Chair: Thank you.

Mr Fashion: My name's Joe Fashion. I am the business manager and financial secretary of Local 353 here in Toronto. This is one of my assistants, Bill Robinson. We don't intend to take very much time, but I'll read our brief, and then I'd like to answer whatever questions you've got.

Ladies and gentlemen, we have over 6,000 members in the greater Toronto area. I want to thank the Minister of Labour, Bob Mackenzie, for giving us the opportunity of responding to the proposed reform of the Ontario Labour Relations Act. We are very pleased that we have a Minister of Labour who has demonstrated that he is concerned

about the workers across the province and is interested in their health and safety and the collective bargaining process.

We are in favour of Bill 40 and we hope this government will take note that the same employers who are lining up to complain about the proposed changes are the same people who spent huge sums of money praising the Mulroney government and its so-called free trade deal. They are only interested in their self-interests and are not concerned about the quality of life of the citizens of Ontario. They are using the same scare tactics and propaganda that they used to promote the US trade deal.

The public was warned by big business that the US trade deal had to go through or Ontario workers would lose their jobs. We found the opposite was true. Instead of jobs, jobs and jobs, Canadians got plant closings, layoffs and welfare. The people who were lobbying for free trade were out of step then and they are out of step now.

I'd like to just cut away from my presentation and mention that the people who presented just ahead of us, COCA, the construction employers, were some of the people who were in the forefront of pushing free trade. I'm sure they presented to the committee around the country at that time exactly what they said here today.

Getting back to my presentation: They want us to believe that progressive labour legislation will somehow take away jobs from Ontario. If we take their argument further, we must be prepared to give up OHIP, the Workers' Compensation Board, health and safety legislation, public education, environmental controls and all other social safety nets that we have accepted to ensure a basic quality of life in Ontario.

Ontario needs good, progressive legislation to ensure that workers can develop their skills and improve their knowledge so we can compete in the marketplace in the future. Ontario's success depends upon greater cooperation in the workplace. This can best be achieved by unionized employees working in cooperation with management and the government. The Ontario Labour Relations Act preamble refers to this, and I want to read it to you:

"Whereas it is in the public interest of the province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees."

You will note that it is in the public's interest, not just the interest of unionized members, but the public at large. This preamble was not written by the NDP government; it was written by the Conservative government of the day. They could see the advantages of the collective bargaining process and they were not accused of driving business out of the province. Quite to the contrary, business flourished in a more stable environment.

We are in favour of the proposed legislation and would like to briefly highlight some of the changes, but before we do that, we must begin by stating that we are disappointed that some issues have not been addressed. The first issue is the strengthening of subsection 1(4) of the act. The Toronto-Central Ontario Building and Construction Trades

Council, which represents 50,000 members in the Toronto area, presented a brief to the Minister of Labour asking for changes in the act to protect workers from contractors who have been successfully circumventing their contractual obligations by the use of project management. I will read from that brief:

"It is our belief that the 1(4) applications must be broadened so that contractors in the construction industry cannot abandon their contractual agreement with the building trade unions simply by reaching an accord with an owner or his agent to withhold certain contracts and/or subcontracts from the scope of work normally performed by the general contractor and subsequently have the owner engage non-union trades to perform the work. If this matter is allowed to continue, the deterioration of the collective bargaining process in Ontario will escalate to the point that the industry will be dictated to by unscrupulous merit shop contractors similar to the situation in Alberta. Merit shop is non-union."

The act should therefore be amended so that subsection 1(4) should include the requirement of an employer which acts as a contractor or manager of construction to ensure that all of its subcontracting or contracting obligations are applied to subcontractors on projects where it is the contractor or manager. The discretionary powers of the board under subsection 1(4) should be removed so that a company is automatically bound to the agreements of its related company.

The second issue which should be addressed is section 135 of the act. We find it very unfair that a contractor can get a cease-and-desist order at the labour board within 24 hours, and yet we have to wait for months or even years before our grievances are addressed. We can have a legal picket line and within hours we are summoned to the labour board for a hearing. Employers are given preferential treatment and this should not be allowed to continue.

We are disappointed that some other changes contained in the recommendations are left out of bill 40. For example, the right of

workers to refuse to cross a picket line during a strike if provisions for refusal are contained in their collective agreement; automatic certification if the union signs up a majority of the employees. Bill 40 should have contained a provision to allow unions to have a list of all the employees for the purpose of organizing. Employers often play games with the list of employees, and this causes unnecessary delays at the labour board during the certification process. We ask the government to reconsider its position on these points.

The proposed changes to the act: Organizing is very important to us because the unionized companies' employees must be able to compete on a level playing field. The proposed changes will assist union workers to organize and this will be good for a stable construction industry in Ontario.

Expedited hearings on disciplinary complaints during organizing activities: As soon as some contractors find out that the employees are trying to join a union, actions are taken against some employees. Now, with the expedited hearings and the possibility of automatic certification,

these attempts to punish workers should decrease. We are sick and tired of seeing workers suffer for trying to exercise their rights under the law.

Improving collective bargaining and reducing industrial conflict: Unless someone has experienced the hardship of a strike, it is hard for them to understand the frustration and anger that is generated by the use of scabs doing the work of someone walking a picket line with no money and no job and no hope for the future. The anti-scab law will remove this thorn in the side of workers and make a small step forward towards a level playing field between workers and management.

Successor rights and obligations: The changes to the act will eliminate the possibility of workers losing their rights because a company is sold. The successor employer will take the place of the predecessor employer in any proceeding before the labour board under any act. Under the existing law, upon sale of a business, the successor employer is bound to the collective agreement of the predecessor employer. However, if the first employer and the union are in the midst of bargaining at the time of sale, then the union acquires only the right to give notice to bargain to the purchaser, and bargaining must begin anew. The new changes will put the purchaser of the business into the shoes of the predecessor employer.

In conclusion, we want to congratulate the government, and especially the Minister of Labour, Bob Mackenzie, for trying to rectify some of the problems of the workers of Ontario. We hope the government will ignore the high-priced lobby of big business and others who would like to see workers regress to the standards in Mexico. On behalf of the members of our union, we also urge you to continue efforts to improve health and safety and the democratic rights of the workers of Ontario.

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Mr Tilson: I wonder if you could tell me specifically how Bill 40 will directly impact your union. What effect will it have on your specific union?

Mr Fashion: It'll help us in the organizing especially, and the protection that workers would get. When we go in to organize a company, there are all kinds of games played. Workers are fired, they're laid off, they're sent home because there's no work for them. They're threatened also. It's just unbelievable.

Then when those cases do come to the labour board, the board has to decide who's lying and who's not lying. It's an uphill battle sometimes to get that company, because once the worker has been threatened, it puts tremendous pressure on him to decide whether he wants to become a union member or whether he wants to hold his job. There are a lot of people who have to think their job has to be more important than becoming a union member.

Mr Tilson: With some exceptions, you appear generally to support the bill in its entirety. I'm wondering if you can tell me, dealing with the specific industry that you represent, how many new jobs Bill 40 will create.

Mr Fashion: Bill 40 will probably create for us hardly any jobs because, as I say, those jobs are already there. It's going to help us organize workers who are already out

there and have jobs, so in our industry I don't see it creating jobs.

Mr Tilson: Do you believe it will cost any jobs?

Mr Fashion: Sorry?

Mr Tilson: Do you believe that any jobs will be taken away or that there will be any job losses?

Mr Fashion: No, I don't believe there will be job losses from Bill 40.

Mr Tilson: So you don't agree with the comments made by certain employers, the delegation that was before you, the Ernst and Young headline in the Toronto Star that it would cost 295,000 jobs?

Mr Fashion: No, I don't believe that.

Mr Tilson: Why don't you agree with that? Have you got any study?

Mr Fashion: I haven't read the study.

Mr Tilson: Have you done a study?

Mr Fashion: No, I haven't done a study. I have to be honest; I haven't done a study.

Mr Tilson: Are you just blankly saying that you don't agree with it, or what facts are you relying on to oppose that study?

Mr Fashion: The facts I'm relying on are the people I talk to. The people I talk to in Pennsylvania and Michigan can't believe the kind of money that we make up here in Ontario. The wage rates down in Pennsylvania and Michigan are \$15-\$16 an hour. Therefore, I think whenever there's a study done, they would be looking at what the wages would be in Ontario, and I think right off the bat that would throw the study off.

Mr Tilson: They indicate their study was a random sampling of senior executives in firms from all industries: 251 Ontario firms, 50 large North American firms headquartered outside Ontario, and it goes on and on. It seems to me quite a substantial random study. It's not the specific type of conversation, as you put it, that you've had with individuals.

Mr Bill Robinson: What would happen if you asked the workers? You're asking the fox who's guarding the chicken house to give you an answer. Can't you predict the answer of a business executive? You go to ask him a question: "Do you want a union?" Would a business executive want a union?

Go to the workers. Did you ask the workers? Did they go to the workers and say, "Do you want to be running barefoot, like in Mexico?"

Mr Tilson: No. I'm afraid you haven't read the study, sir. It had to do with the issue of loss of jobs, not whether they wanted a union.

I guess if you're going to put forward a piece of legislation as substantial as this, you must base it on some sort of facts and not just the whims of individuals. I'm simply saying this is one study, and our particular party, the Progressive Conservative Party, has been trying to encourage the government members to ask their minister to do specific studies on this subject. None has been forthcoming. There hasn't been one union that's done a study. They

have the financial resources for it, but they haven't done one study.

You made substantial criticisms of the previous delegation, and I'm simply saying here's one study—

Mr Robinson: What was the study the Conservative government did on free trade? Was it accurate?

Mr Tilson: We're talking about labour legislation, not free trade.

Mr Robinson: We're talking about economics.

Mr Tilson: I'm simply saying here is one study that was done, a substantial study of a considerable number of firms, and I'm simply challenging you as leaders of the union movement: What sort of studies do you intend to do?

Mr Robinson: Did Mulroney do a study on free trade, and what were the results of it?

Mr Turnbull: Yes. We are doing more trade today, in dollars and cents, than we did before free trade.

Mr Robinson: If you believe that, I'll sell you some oceanfront property in Arizona. For sale for you, buddy.

Mr Turnbull: I don't need to buy oceanfront property. That's a fact.

Mr Tilson: Well, sir, I've listened to both of your remarks, and they seem to be rather antagonistic. The Minister of Labour said Bill 40 will improve the labour-management relations in Ontario. Now, I have listened to both of your comments, and even in our exchange, in which I've tried not to be antagonistic, your comments and your attitude seem to be rather antagonistic as far as the whole issue of labour relations is concerned. My question to you is, if Bill 40 will improve labour-management relations in Ontario, how will this happen in your workforce?

Mr Fashion: I'd just like to mention that I was not antagonistic to you. My partner here probably was—

Mr Tilson: You're right.

Mr Fashion: —but I want it on the record that I was not.

I also want to explain to you why we didn't do a study. The reason we didn't do a study is, we spend 90% of our time running after employers who are cheating and not paying health and welfare and pension money to their people and trying to organize other companies. We don't have the resources that COCA does, which probably has millions, and a \$1-million budget to go out and get these. In fact, I wouldn't even know where to go to try to get a study done. But these people know where to go, and they've got the full-time people and the full-time money to put into it. We don't have that. We run at a loss. We don't have money for that resource.

Now I'm getting antagonistic. I'm sorry.

The Chair: A little bit of antagonism never hurt anybody.

Mr Ward: Joe, I'd like to thank you for the presentation. I think your presentation is based on real-life experience and what you've seen take place in the labour movement.

What I think is the general consensus from all sides is that the workplace and workforce have changed drastically since the 1970s and that there is a need for labour reform. What type of labour reform is what this committee is hearing, and we're hearing two sides. On the one side there is a perception about the initiatives in Bill 40, which are in place in one manner or another throughout Canada, either federal or provincial jurisdictions. But what we're trying to do as a government is recognize that we are facing economic challenges in the 1990s and we need greater co-operation among business, labour and government if we're going to overcome the obstacles we're facing.

We think because of the changes in the workforce and the workplace and the fact that the Ontario Labour Relations Act has not followed those changes, has not been brought into the present, let alone the future, if we don't have labour reform, we're going to suffer as an economy and as a society. Yet we're hearing comments that the initiatives in Bill 40 will drive a wedge between labour and business and that cooperation we need will not be there.

How do you answer the critics, recognizing the changes in the workplace and the workforce, recognizing that there is general consensus that some type of labour reform should take place? The critics are saying the initiatives in Bill 40 are going to drive a wedge between business and labour, and the people who more or less support the initiatives are saying it's going to develop greater co-operation. So how do you answer the critics who are saying it's not going to develop that cooperation we think we need for the future?

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Mr Fashion: I don't think it is going to drive a wedge. The reason I say that is, there's already cooperation out there, there's a changing workplace out there. As a matter of fact, I've been business manager of my local union for five years and I've seen a change in the workplace out there. It's got nothing to do with Bill 40, but there's already a change out there whereby labour realizes that if it doesn't get together with government and business, we're all going down the drain together.

A good example of that is what's happened here in Ontario in the last two years, where the electricians, the International Brotherhood of Electrical Workers in Ontario, came to an agreement with the Electrical Trade Bargaining Agency of Ontario, which is our counterpart that we negotiate with, and we came up with a no-strike resolution for this round of bargaining.

We had four strikes in the previous 10 years, and we recognized that it was going to go on and on; you're going to go on strike every two years. You know who fought that? The Council of Ontario Construction Associations. COCA fought that because it didn't want us to be bargaining this way; it wanted to force us on strike.

They sit here and talk about how they want to be partners with labour and government. They don't want to be partners. I'm telling you, labour wants to be partners, and we did become partners. We didn't have a strike this year. The electricians union didn't have a strike. I know the labourers have one at the present time, but we finished

bargaining February 15, 10 weeks before our normal contract was up. The point I'm making is, there already is a change out in the workplace. Labour realizes you can't be at conflict all the time.

Mr Robinson: One point, if I could. If you listened to the man from COCA, the question was asked by the lady there, what percentage of the people you're representing are union? He said 45%. So who's he representing, the non-union sector? If the union sector goes on strike, who gets the work? The non-union sector while they're on strike. So it's in his interest to have a strike. That's why they didn't want, as Joe pointed out, to have a more cooperative approach to bargaining.

Mr Offer: In your presentation you speak about some aspects of importance that are not contained in the bill, such as the necessity for you to have a list of all employees. Could you please explain why it's necessary for you to have a list of the employees and what a list means?

Mr Fashion: Okay. A good example is, there are employers out of London that might have 100 electricians and apprentices working for them. They might be working in London, Sarnia, Windsor, Hamilton, Kitchener and Toronto. If one of my organizers finds them here in Toronto, the guy says, "Sure, I want to join the union," and he might know four or five other people in that 100-man company. He'll give you those names and now you chase those four or five guys around, and when you find them—they might be in Sarnia or any of those places—maybe they know four or five.

To get the overall list, it can take a year to try and organize a 20-man company, just trying to find out who the people are, because with a lot of construction work sites, the guys are only there for two weeks, maybe three weeks. They only know the guy's first name. They don't have any idea what his last name is, where he lives. In a lot of cases it's almost impossible to come up with a list, especially in the situation I've just referred to, a 100-man company spread around the province.

As you know, when you organize in the province, it's got to be for every man in the province. You have to have a count for every person who's working in the province. If you don't get over the 50%, then you're beat, you lose, and you might have spent a year putting that together.

Mr Offer: It seems that you've thought through the list issue quite thoroughly, and you mentioned that the list contains the name and address of the employee. What do you say to those who say you have no right to that because that's a matter of private and confidential information and you shouldn't be able to have a list of employees where their addresses are indicated just because the particular worker may not wish that particular information to be given? How do you respond to that?

Mr Fashion: If I found out there was a list and 20 people on that list didn't want me to talk to them, then I guess I wouldn't go and talk to them. I'd just work on the other 80 people.

Mr Offer: The problem on that is that you already know what is personal information for individuals. I am wondering how you can reconcile your right to organize

with the right of a worker to have and remain confidential where he or she may live?

Mr Fashion: I agree that's probably a problem, and I don't know how you resolve that. I want you to know that when we go out and organize, we don't put any pressure on anyone. We go in there, we try to show them what the benefits are in belonging to the union, and mostly it's pension and health and welfare, because most of the non-union people out there don't pay pension money and don't pay health and welfare money. Therefore, that's usually the big advantage we've got when we go in there to organize.

Mr Robinson: Could I respond to the question?

The Chair: Yes.

Mr Robinson: What if you just gave the union that was organizing the names and not their addresses? Our problem is twofold: first, it's getting in touch with the individuals to see if they want to join the union; second, even when we have a situation where there's a company that is solely in the Toronto area and we do think we know who the employees are and we do get before the board, the companies play games with who is actually in the bargaining unit; all of a sudden people are laid off and new people are hired. So when we think we have the numbers, we go there and we don't have the numbers.

If they had to give us a list on a certain day of organizing or some sort of day of discovery, then we would know what we're working towards and be able to know, through contacts with other employees, who these individuals are and where they're working.

We can go to a hearing and find out that: "Hey, guess what, guys? They don't work for us any more, and we just hired another 30 guys." You know what construction's like: there is no seniority, they can hire you and lay you off at will, regardless of whether you've been there five or 20 years. It's not like an in-plant situation where there are basic seniority rights within the plant, and it's not like you can stand outside the plant gate and wait for the employees to come out and ask them if they want to join a union, because the sites are spread all over your jurisdiction—and as was pointed out earlier, not over just our jurisdiction geographically but over the entire province—and when organizing you must have a majority of the employees throughout the company, regardless of what jurisdiction you're working in.

Mr Offer: In the final analysis, the question I would like to pose to you and receive a response is, which right is greater, your right to organize or the worker's right to retain as confidential his or her address?

Mr Robinson: I tried to answer that earlier. We wouldn't necessarily need their address. If we had their names, at least we would know what we're working towards and not be faced with a situation where there are 20 employees and all of a sudden there are 10 more names on there and 10 are laid off and we don't have the numbers that we thought we had.

As to their rights, you might say what right does a bank or any other institution that the company deals with have to have their names and addresses, which they would have. Any other institution that is recognized by laws or the

government would have far greater access than we would even be asking for.

The Chair: Thank you, Mr Robinson and Mr Fashion, and the International Brotherhood of Electrical Workers, Local 353. We express our gratitude for your being among the over 1,100 people and organizations that have wanted to participate in these hearings since the ads were published two weeks ago. We're pleased that you had the chance to come here, and all of us, obviously, have enjoyed your comments. We thank you and your membership for taking the time and displaying the interest. We trust you'll keep in touch.

Mr Fashion: Thank you for having us.

Mr Robinson: Thank you very much.

The Chair: I should also mention to the IBEW that we express our gratitude for your permitting yourselves to be rescheduled on such short notice. You made it far more convenient for the clerk.

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CANADIAN FEDERATION OF INDEPENDENT GROCERS

The Chair: The Canadian Federation of Independent Grocers, and there's a written brief that's been submitted that, like all the other briefs, becomes an exhibit. All the members have it, and of course members of the public who are interested in any of these briefs or submissions or in transcripts, by way of Hansard, are entitled to those and can obtain those free by contacting the clerk of the standing committee on resources development or any MPP's office. We encourage people to do that if they're interested.

Tell us who you are and what your status is, and try to give us the latter 15 minutes of your half-hour time frame for questions and exchanges.

Ms Carole Nap: My name is Carole Nap. I'm vice-president of the Canadian Federation of Independent Grocers. I'm feeling a little bit at a loss here. Two grocers were to be here tonight to accompany me. Being very small, hands-on organizations, one grocer called this afternoon and has an emergency at his store and wasn't able to attend. The other grocer who was sitting with me here earlier drove in from Trenton and is quite ill but came anyway, and he's just down the hall right now and hopefully he'll rejoin me in a minute.

Mr Ward: He's kind of pale looking, is he?

Ms Nap: Yes, that's right. He drove all that way, two and a half or three hours, to be here and made the effort, so hopefully before I finish he'll have the opportunity to come back in and join me. But in the meantime I'll go ahead with the presentation.

You have before you our formal written presentation. I do not intend to read it to you. You'll be able to do that at your leisure. I would just like to point out a few of the recommendations that we have in this brief and first of all tell you a little bit about the Canadian Federation of Independent Grocers.

We are this year celebrating our 30th anniversary of service to our members. For your information, an inde-

pendent grocer is defined as a grocery operation which is not traded publicly, which is Canadian-owned—and if you've been in many of our stores, proud to be Canadian-owned—privately held and operated on a day-to-day basis by either the shareholders or the members of their family; and in most cases, members of their family, that being the reason why one of my grocers wasn't able to attend today.

The members of CFGI vary from small stores of 4,500 square feet to large supermarkets of 35,000 square feet, and they provide full supermarket retail service in their areas; that is to define us as separate from convenience stores, because there are some cases with large convenience stores where people think there's a bit of an overlap.

CFGI represents over 3,500 independent retailers in Canada; approximately 40%, around 1,600, of these are in Ontario. In Ontario, independent grocers represent almost half of the retail grocery sales. Once you move out of the major cities, it's independents in primarily all the small locations in Ontario. So we are truly community-oriented, community grocery stores.

Often our employees' careers are centred in one of our family-owned stores, where they start out in the grocery store as a teenager. Perhaps they go off to other things, but wind up coming back to the grocery industry.

CFGI has had a long history of working closely with all levels of government to develop effective solutions to problems facing the industry. As independent operators of small businesses, we believe that reasonable solutions are the most beneficial to all stakeholders in the long run.

CFGI has worked on the National Task Force on Cross-Border Shopping with producers, processors, retailers and unions. We have also worked on the Food Industry Partners Committee, looking at market responsive pricing, in order that Ontario and Canada can be competitive in the marketplace.

At the present time with Bill 40, CFGI is concerned with the timing and the economic impact of the proposed amendments. These amendments could discourage investment, business expansion and job creation in Ontario at a time when the economy is already suffering from the effects of a recession.

We have some following comments we would like to make about the legislation. These are not all-inclusive, but are points that we feel are particularly pertinent to the independent grocer and his operation in his store.

In terms of the purpose clause, we feel it's important for employers and employees, unionized or non-unionized, to know that they will be treated fairly and impartially. As the purpose clause is now written, it is biased in favour of organization. Whether you are union or non-union, I think that most people would want to know that they would be treated impartially and on the merits of their own cases when they were brought before the board. Therefore, we're proposing that the purpose clause be written so that it will be impartial in its application.

In terms of the certification process, again we are looking at fairness, freedom of information and equity. There must be freedom of choice by the employee, and this must be assured by a secret ballot. There must also be opportunity for

the employer to have a post-application appeal process and to work with his employees.

We believe that the threshold for certification should remain unchanged and we agree that the \$1 membership card fee should be withdrawn.

At this point, I'd like to make a point from the last group that was here—although we don't actually have it in here—the comment about requiring employee lists of names and possible addresses. In terms of being able to help in the organization efforts, in the independent grocery stores, 50% to 60% of our employees are female, often single parents, often female students, often living alone not with a family, and as employers being responsible for the wellbeing of our own employees, we would probably be quite reluctant to hand over a list of names and addresses of our female employees, even if it is for the purpose of unionization.

I don't think have to bring to light some of the instances of things that have been happening in the general public and in the community in terms of assault and those other unpleasant things that are happening. I don't think that handing over lists of female employees is the proper thing to be doing. That's an aside which is not in our brief, but I just wanted to comment on that.

In terms of the consolidation of bargaining units, again we would like to point out that the board should not unilaterally decide how bargaining units should be set up and when they should be consolidated and whether or not full- and part-time bargaining units should be put together or consolidated. This should be the opportunity of the employees as they form a bargaining unit, or who are in a bargaining unit, to make that decision. It shouldn't be something that is automatically mandated by a board without hearing the facts of the individual situation.

In terms of replacement workers, as it stands now there are exemptions allowed in emergency situations where the work is necessary to protect health, social and community services, the environment and to prevent serious damage to property. I guess it's a matter of how you actually interpret that exemption.

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In terms of grocery stores, we feel grocery stores should be protected from significant hardship due to food spoilage. The food we have in our stores is extremely perishable. Quite often we're looking at two or three days' shelf life. A week-long strike means an entire loss of your whole fresh fruit and vegetable category. It isn't as if you could take it and move it somewhere else, because where do you put it, and you can't store it any longer.

While there is some mention of emergency services for things like refrigeration and freezers, for those of you who have been involved in working with them, I think you realize the importance of regular maintenance. It has to be preventive. You can't wait until the freezer is broken and then call someone to come in and repair it, because you've lost everything in the meantime. It would become unsafe food in order to sell to your consumers. So that regular type of maintenance needs to be maintained and there needs to be an exemption in order to do that.

One of the other points I'd like to make is that, as I've said, because we're small, independent grocers in small communities, quite often we are the only grocery store for that community. Should there be a strike in a community, how do individuals in that community then get their daily food requirements? We've seen this continual trend to daily shopping, every-other-day shopping, instead of going once a month and stocking up. If there's not some provision made in these communities for individuals to get food, I think the legislation will hurt the very people it's trying to protect, such as women, minority groups, single-parent families and children, low-income families, the elderly and people on welfare. If you think of Thessalon or Cochrane, where are they going to go to get their food, to be able to drive or have access?

We would like to see a provision in that case, where it is the sole source of food in a community, that the community residents would still have access to their daily requirements.

The other thing we think should be in the legislation from the beginning is a mechanism whereby the unions would be making the necessary payments for the benefits they expect to have continued for their employees. This should not be a stumbling block in the bargaining. It should be a matter that is set out ahead of time that for those benefits the payments would be made as they come due. It couldn't be used then as either side for bias.

In terms of access to third-party property, many of our independent grocers are part of third-party property or malls or small malls or rent the premises they're in. Currently, leases contain clauses whereby the tenant indemnifies the landlord for any damage. As the tenant would have to pay the landlord if there was any damage done, we would like to see a clause in there in terms of our small independent stores where, if there is damage done by a union during activity it has authorized, it would be liable for that damage. Again, it's just a matter of fairness.

Picketing and organizing activity on property normally open to the public should be restricted so as not to infringe on a consumer's ability to procure other services offered at the same location. Again, many of our independent grocery stores are also in small malls where there might only be two or three stores. You would have a grocery store, a hardware store and a drugstore all together in a common locality and they could be prevented from shopping in these other places.

In conclusion, the Canadian Federation of Independent Grocers is pleased to be able to come here and present our points to you. We are both prepared and anxious to assist in the provision of further information or participate in consultation. Again, I would like to reiterate that we think fairness and equity should be the basis of any legislation, and anyone coming before the government should be assured of impartial treatment based on their own individual circumstances.

The Chair: Thank you, Ms Nap. Mr Fletcher and then Mr Wood.

Mr Fletcher: Thank you for your presentation. I'm very glad that you came. One thing I will not do is try to

intimidate you because you're from the business community or something like that does happen from time to time when different members try to intimidate people. When I look at your presentation, you say a few things about these amendments will discourage investment. Are you a member of the More Jobs Coalition or any organization such as that?

Ms Nap: No. We have attended some of the the All Business Coalition meetings and I guess I would say are probably fringe.

Mr Fletcher: Did your organization, the CFGI, do an impact study of any kind as to what the—

Ms Nap: No, we didn't.

Mr Fletcher: So you are not really sure about the "discourage investment." It's just something that occurred—

Ms Nap: No. We looked at things like the Ernst and Young study that was done and a number of other studies, but we have not done an independent study on our own.

Mr Fletcher: Do most of the organizations that are part of your group have good working relationships with their employees? I notice that you did say the union gets together, you work together. There are some union-organized stores—

Ms Nap: Yes, we do have organized stores in our membership.

Mr Fletcher: And you have a pretty good working relationship with—

Ms Nap: Yes. We think we have a very good working relationship with our unionized stores and with our non-unionized stores, because in the small community you usually know the individual's parents or you know the kids or they worked for you in high school, universities—

Mr Fletcher: Yes, a community organization almost. Do you think this legislation is going to have a detrimental effect on the employees and employers who do get along? Do you think it's going to create disharmony or friction between them, if there is already a working relationship?

Ms Nap: We think, from the broad-base perspective, that people will look at it as another piece of legislation and therefore they are going to say, "Okay, the government's doing one more thing to impede business." In terms of the individual relationships, again, it's all a matter of how it's applied and the people you are working with.

Mr Fletcher: That's true.

Ms Nap: There probably will be some instances where it will create barriers in the working relationship and there will probably be many other instances where life will go on just as usual.

Mr Fletcher: Some of those barriers are already there. Thank you very much.

Mr Wood: First of all, thank you for coming forward with your presentation. I'm sure you are aware that the changes being brought forward are about 20 years in the making. There have been very few changes made to the collective bargaining process since 1975 and the workforce has changed drastically since then. I believe we had

figures at one point a few years ago: 38% of the workforce were women and now it's up to over 50%; minorities, more part-time workers as a result of a lot of the jobs we lost through free trade when that was brought in.

I'm just wondering what major things you think we should be looking at that would hurt the employees or the workers in the independent grocery stores; if there is real serious concern that you think will harm the relationship that you say in your answer to Mr Fletcher seems to be good. Is there something in here that you think will really harm the relationship between the employee and the employer?

Ms Nap: The things we see harming the relationship between the employee and the employer are those things which happen outside of their jurisdiction. That's why we dwell on the purpose clause. It needs to be impartial so it can be applied impartially based on the circumstances that come before it. If there is any imbalance—we're not saying that maybe it hasn't been one way and now it's moving the other—we think the opportunity is for balance and impartiality and then there won't be the wedge to drive between employers and employees.

If that should happen in the legislation and it remains where the board can make the decision that two bargaining units are going to go together without ever having to consult with the individuals, either employees or employers who are involved, that it can be made unilaterally; or if there are purposes in there which give an imbalance to the situation—those are the things that will drive the wedges in between. We're looking for reasonableness, impartiality and judgement.

The Chair: Thank you. Mr Cleary, Mr McGuinty and Mr Offer.

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Mr Offer: Thank you very much for your presentation. I must say that I think you've addressed some critical areas and the way in which you've done it really set out the necessity for changes to the legislation and the reason for that. I certainly thank you for the time you and your association have taken. That is by way of opening comment.

I have a specific question on the issue of replacement worker. I think in your opening you said that a number of your members are small operators. It may be a family type of operation located in many of the communities in the province. Under the current legislation as proposed, if there is a strike, the owner, the employer of that grocery, would not be able to bring in, of course, any replacement workers. They would be prohibited. Keeping in mind the nature of the operation, I would like your thoughts as to whether, if it is appropriate, the owner should be able to bring in potentially members of his or her own family on a volunteer basis to address some of the issues you have brought forward.

Ms Nap: That is one of the issues we looked at too. Our interpretation of the way these amendments are set out is that family members would not be allowed to be brought in. Any type of replacement workers would not be allowed in because supervisors can also be unionized now and may only have one or two in a grocery store. In fact, if there is a

strike, the only person left to come to work is the owner who cannot run the store alone or make sales on his own. Again, this is why we think there are some basic, essential people that need to be left in the grocery store to look after the equipment and the maintenance.

Maybe what we have to do is look at restricting how many cashiers or cash registries you could have. Again, if you're back to the community where you're the only source of groceries in that community-look at what happened in California when they had the riots and what happened where there were no grocery stores open for people to shop in. We don't need that in small communities. We need to be able to bring in people to move fresh produce and supply the people in the community with their daily food requirements. So we would like to have that ability within this replacement worker clause. We need that in order to survive.

Mr Offer: Thank you very much.

Mr Turnbull: Welcome, Ms Nap, as your MPP for your association. I'm pleased I was here tonight to hear your presentation.

I have a lot of questions, but unfortunately not very much time. With respect to the process by which the government developed Bill 40, could you comment first on how you feel about that process. Second, what would you feel about our suggestion that a tripartate approach would have been more appropriate whereby the members of industry workers and government get together and develop amendments to the labour law?

Ms Nap: The first part of your question regarding the process and how the revisions were brought about—we had been invited to a couple of briefing sessions where we were told the type of amendments that were going into it. Most of the sessions—well, most, when we're only talking two, I think—were not interactive. They were more explaining what was going to happen in the legislation and the amendments that were going to be made.

Probably a lot of the animosity that perhaps has developed over the last few months could have been avoided if there was more interaction in the beginning and more understanding around the table. Tripartite—make it four, make it eight, our philosophy is that all the stakeholders should be at the table and part of the discussion; that's when you get the best solution—so not necessarily tripartite, but that as a minimum.

Mr Turnbull: With respect to picketing on third-party property: Clearly, some of your shops must be located in shopping plazas and you already alluded to the potential of liability of your shops. It seems to me that your industry is a very low-margin industry. What would be the impact of a strike which was very disruptive to a shopping plaza, both in terms of your ability to get insurance and, second, your ability to renegotiate a lease when it came up?

Ms Nap: Independent grocers have been taking the brunt of a lot of the recession at this point. Because we're usually a single-family-owned store, we don't have other stores that are doing better, or corporate stores versus independent stores, where we can slide around some of the

profits and ease our way through it. When we're in a recession then we're faced with it as a crunch.

Many of our independent grocers are suffering with no profits right now, in fact running at a deficit or just hoping they're going to break even, particularly in border communities.

Mr Turnbull: The last question would be with regard to the ability for a union to wait out the 30 days and that the first contract be imposed upon the independent grocer. Given the very low margins or, as you've said, sometimes loss situations, the fact that this takes no account of your ability to bear any extra burden, what would be the impact?

Ms Nap: To be very blunt, probably in 30 days we wouldn't exist as an independent store. That would probably be our lifeline, 30 days.

Mr Turnbull: So you feel that the government, as a minimum, should direct any first contract to take into account your ability to pay?

Ms Nap: That's right.

Mr Turnbull: Thank you very much.

The Chair: Thank you, Ms Nap. As you might have heard, over 1,100 groups and individuals wanted to participate in these hearings and we weren't able to accommodate them all. We're pleased you were able to be here and represent the faction of the business community that the Canadian Federation of Independent Grocers does.

We thank you and your membership for your participation, for taking the time, displaying the interest and presenting the brief that you did. Trusting that you'll keep in touch and if there's anything else, of course, we'd be pleased to receive further written materials. Thank you.

Ms Nap: Thank you.

AMERICAN SOCIETY FOR INDUSTRIAL SECURITY

The Chair: The next participant, and the last one for this evening, is the American Society for Industrial Security. Speaking on behalf of the American Society for Industrial Security is Brian Patterson, chair of the legislative committee. I trust you'll introduce your colleague, Mr Patterson.

Mr Brian Patterson: Mr Wayne Renwick is president of the Toronto chapter of the American Society for Industrial Security.

The Chair: You have to repeat that at the mike.

Mr Wayne Renwick: Mr Wayne Renwick.

The Chair: Thank you, sir. Your title is?

Mr Renwick: I'm chairman of the Toronto chapter of the American Society for Industrial Security.

Mr Patterson: Mr Chairman, it's a pleasure to address the legislative committee on Bill 40. Wayne's going to introduce you to the American Society for Industrial Security and you'll see that the American component relates to its place of origin. In fact, it's the largest international association of security professionals in the world.

Mr Renwick: Thank you, Mr Kormos and fellow members. The American Society for Industrial Security consists of approximately 22,000 security professionals in

North America and internationally. It's the largest organization of its kind of security professionals. Members are dedicated to protecting people, property and information assets of a diverse group of private and public organizations.

ASIS, which is the short terminology, are management specialists who formulate security policy and direct security programs for banks, aerospace facilities, communications, hotels, museums etc, and countless businesses and institutions. Security administrators from the nation's leading firms distinguish the current membership roster, including organizations locally like Northern Telecom, Bramalea Ltd etc.

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Since its founding as a professional membership society in 1955, ASIS has continued to grow in recent years. The organization accepts about 4,000 memberships a year. It is committed to advancing professionalism in the field of security. The society's global network is organized on local, regional and international levels, Canada being one international level which has six active chapters.

You may or may not have heard of an organization—it sounds quite familiar—the name being the Canadian Society for Industrial Security. We have worked collaboratively with them on a number of projects.

ASIS's members are charged with initiating a supervisor in loss prevention and crime prevention programs to thwart international and internal and external offences and crimes, offences ranging from terrorism to pirating of classified documentation, industrial espionage, counterfeiting etc, and preventing and minimizing losses for such natural and man-made disasters as fires, riots, strikes and other civil disorders.

In essence, we view ourselves as somewhat of an essential service perhaps not far away from the enforcement arm more commonly referred to as the police department but on a private level.

I'm going to turn it back over to Brian for his presentation in relation to this.

Mr Patterson: It's fair to say, Mr Chairman and members of the committee, that no piece of legislation in the past 20 years has galvanized the membership of the security industry as Bill 40 has. You'll probably be aware that under the present labour act, security officers and the provision of security within institutions and environments in Ontario is exempt under section 11 and there are special considerations taken into account when dealing with security officers and the provision of their services.

Without a doubt, at any given moment in Ontario the employees we represent through our membership and members are protecting property at both private and public levels and there isn't a single Ontarian who doesn't benefit from the professional services provided by the segment of an industry that we represent.

No one has a record of fairness and cooperation with government legislation equal to the security industry. We are not only regulated by normal business practices and legislation within Ontario, but we are separately grouped in the contracted security industry under the Private Inves-

tigators and Security Guards Act which is administered by the Ontario Provincial Police.

The industry has grown significantly over the last 20 years. Ontario benefits by both this growth and its previous ability to diversify for small business and small operators. There are currently over 300 separate agencies providing security services within the contracted sector and we have well in excess of 40,000 employees who work every day protecting the life and safety of all citizens in this province.

Bill 40 has had a galvanizing effect for two reasons. Labour involvement in our industry represents less than 5%. Part of that is due to the way in which security was segmented under the previous labour legislation and partially, I believe, because until quite recently we were not seen as easy to unionize or easy to certify. Some of our agencies represent as many as 2,000 employees. Some security firms have less than 15 employees.

The labour-management relationship within those agencies has worked well over the last 20 years. We have seen an increase in the wage, training and the overall delivery of service by employees throughout our industry. We have seen new segments of the industry develop that relate to the protection in areas of fire safety, the enforcement of life safety systems within given plants and the ability of our people to work closely with law enforcement throughout Ontario. We currently have three people working in the security industry for every police officer in this province, and the areas of jurisdiction our employees are involved in are substantial.

The American Society for Industrial Security is not the representative of the contracted guard agencies. We do not exclusively represent manufacturers or builders. We have members who deal on a day-to-day basis in unionized environments and in non-union environments and we have members who deal on a day-to-day basis with contracted employees who are a subset of the employees at a given facility which may or may not be unionized.

I'd like to take a minute to review the reasons for security being exempt under the previous labour act. There are a number of enforcement protections provided by our members, in a generic sense, on the manpower side. We check for drugs and alcoholism in the workplace and we ensure safety at a number of locations. We have occasions in which our employees are required to check and ensure that certain standards are maintained by all employees within a facility. It is not uncommon for the security department within a given location to be responsible for not only loss prevention from outside but loss prevention internally.

We believe it will create a difficult labour-management relationship should all security practitioners at one location be unionized and under the current legislation be grouped in with their brother members locally. That is clearly the rationale that allowed our industry to stay outside of collective bargaining to date. The labour movement up until quite recently didn't want to have security officers within its membership. We've developed to some degree an adversarial relationship with a number of security unions in

this province due to the situation with strikes as they have developed.

Under the current legislation, the retroactive clause that has been suggested, that this legislation will impact as far back as July 3, is of great concern to our members across the board, not only those who provide services to our members but the members who are signing contracts currently with new agencies. There is a reasonable amount of turnover in the security industry. That's based primarily, we believe, on the provision of services by the agencies providing those services. They are currently unable to negotiate contracts that impact in the retroactive area if they are replacing an agency that is unionized.

We strongly believe that there is a conflict of interest between members of the same union enforcing regulations against one another. We see this conflict of interest as very similar to police officers internally investigating their own forces. We don't believe that's the role and function of our members and it would create a great conflict.

It does not improve the working conditions in this province as it's laid out. It will not impact on the number of jobs in the security industry. If there are in excess of 40,000 people employed in this sector right now, there will be 40,000 people employed in this sector after this bill passes. The changes are not going to be in the area of jobs; they are likely to be in the area of labour conflict. We believe it's going to be big unions looking at the 95% of our industry that is currently not unionized, moving for market share as opposed to moving for beneficial conditions and training.

We currently are regulated by the Private Investigators and Security Guards Act and would like to see that area strengthened.

We would like to see a number of areas in security looked at separately with this bill. We encourage the government to review the rationale that groups security in with other service providers. Security and life safety is a critical item that must be maintained in any location, 24 hours a day, seven days a week. How that could be similar to the provision of cleaning services or the provision of food services etc has certainly startled our members, none of whom were consulted as to this change.

We are for primarily the fairness and the delivery of fair process within the industry. We believe we do that through our members and through the delivery of our services on a day-to-day basis. There is certainly no consensus among our members that this bill, as it currently stands, will treat our industry fairly, will treat our members fairly, will benefit our employees and will benefit the employees who we protect on a day-to-day basis, and that is every employee in Ontario at every company at every opportunity in every public institution.

Mr Renwick: We certainly support the premise of the worker getting fair treatment. We support any collaborative efforts we might be able to assist in on an interdisciplinary, interministerial approach, whether it's the Solicitor General's department, ergo the OPP, registrar's department, or the Ministry of Colleges and Universities, in establishing appropriate and professional standards for the

training of security officers. We would support all those efforts as well.

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Mr Offer: Thank you for the presentation. It's very important because it zeroes in on a specific area in the legislation and in the proposed amendments which I must say has not yet been addressed by any of the previous deputies in the depth that you have, if memory serves me correctly.

I would like to get your position, if I could, as clear as possible. Currently in the bill there is the provision that security guards can be organized. What is your position with respect to this aspect of the bill?

Mr Patterson: The bill, as it currently stands—

Mr Offer: I'm sorry to interrupt, but when we say "as it currently stands" or "in the amendments," I'd like you to be as specific as possible.

Mr Patterson: The copy of the bill we're working from is Bill 40, second session, 35th Legislature etc.

Mr Offer: Yes.

Mr Patterson: Currently, for a number of the agencies involved in the industry and a number of people who provide services, this is incredibly disruptive in how it's going to be delivered. We believe we're simply moving to another cost of labour which will be funding the growth of a number of the major unions in Ontario and that this cost is going to be passed on to us as purchasers of service and will be passed on to the clients of providers of service.

We're not sure there's going to be a net benefit. We're looking at it like a charity. If 80% of the benefit goes to the employee, we're for it; if 80% of the benefit goes to build big unions, we're not for it. Right now, it looks like it'll build big unions and not likely benefit our employees directly or provide better occupational safety on the work sites on a daily basis.

Mr Offer: You're concerned about the provision on the issue of cost. I'm wondering if your concern with this provision included is based on any extra complication it has for you in the administration of what it is you do.

Mr Renwick: It does indeed, Mr Offer. Similar to the police department, it would be inappropriate to have the police department unionized by the same union that it would perhaps be negotiating or dealing with in a management-labour struggle that might take place as a result of a contract disagreement, walkout or strike. When that takes place, as you well know in the region of Peel, the situation of the police department becomes more representative of a third party, not standing on picket lines taking one side or the other but trying to help negotiate some kind of reasonable civil order. Indeed, this is where the security industry gets thrown perhaps right back into the Stone Age of when the police departments did perform that task. Perhaps you know I can state that because I'm an ex staff sergeant from a police department in the region of Peel.

That's very problematic to our industry. To have them represented by the same union that perhaps was having union strife with the particular industry they were contracted to or were proprietary to in-house would be, from a

service delivery standpoint, totally inappropriate and impossible.

Mr Patterson: To put that into a scenario that has concerned our members, ABC Security has 750 employees and they probably provide services at anywhere up to 100 separate locations in and around greater Metropolitan Toronto. If they come into the binding arbitration, shut-down, no replacement workers scenario, it's not that ABC Security is now shut down; we have 100 locations in Ontario or in the greater Toronto area which now have no life safety or support. We have residential condominium facilities that have no one watching the fire panel, responding to fire within that facility or dealing with emergencies on the site. We have public institutions like hospitals which then have no security operating on those facilities. That could occur at midnight.

A security company's head office, if you've been to one, can be 2,500 square feet, but it can have 500 employees out there at various locations. We work on third-party property and we're putting that property at risk in the event of a labour disruption. That's a great concern to our employees and to the clients who utilize these services.

The Chair: Mr McGuinty, briefly; we wouldn't want Mr Tilson to think you were using his time.

Mr McGuinty: Are you telling us that you would rather not see security guards given the right to organize, to form unions, or are you concerned more with the issue of replacement workers? Are you saying allow the security guards to go ahead and form unions but you should be exempt from the provisions relating to replacement workers?

Mr Patterson: We think there're some significant issues with replacement workers, because if the employees had to continue to go to work, and allowing for binding arbitration, we're not sure that's to the benefit of the employee or employer. What we're saying is that security is a separate and essential service and that this bill threw the baby out with the bathwater. We're placing a significant number of locations at risk if we allow in a unionized environment some security companies to be shut down because they're unionized and non-unionized private companies to operate outside of the legislation. It's creating a whole new mix in the marketplace and we're wrestling with that right now. The first blush is that it's dangerous.

Mr Renwick: We're not challenging the issue of unionization; what we're challenging is the ability to be able to still perform our function based on placing the security industry under this act.

Mr Tilson: One of the charges that has been laid with respect to the unionization of security guards is the subject of conflict of interest; in other words, where all or part of a security guard's job description is to report on other employees for different reasons, which I think you've briefly alluded to, that would therefore result in conflicts of interest or potential conflicts of interest.

I assume you've read subsection 7(3) which deals with that subject. I'd like you to turn to that and tell me what your interpretation of that subsection is.

Mr Patterson: Okay. "A bargaining unit consisting solely of guards who monitor other employees shall be

deemed by the board to be a unit of employees appropriate for collective bargaining."

Mr Tilson: Let's deal specifically with that. Are there security guards whose jobs are solely to monitor other employees?

Mr Patterson: It would be difficult to limit the job description of a security officer to the supervision of other employees and their tasks. Our security officers are responsible for overall life safety. Activities that breach that life safety or breach rules and regulations within the facility would fall into that category. Employees stealing product from a facility is theft in the eyes of the security department and we deal with this theft, whether it's a manager, the president, owner or whomever. You would seldom find a scenario in which a security officer is solely limited to watching other employees on a daily basis.

Mr Tilson: So it's unlikely that this section would apply.

Mr Patterson: It's unlikely. It's too narrow.

Mr Renwick: If you made the definition that narrow, it would be unlikely.

Mr Tilson: The other comment I have is that it looks to me that the word "and" is between clause (a) and clause (b); in other words, not only must the trade union ask for it but the board must deem it appropriate with respect to a conflict of interest.

Mr Renwick: In all fairness, Mr Tilson, I find it problematic to argue the exact wording of legislation. What we're trying to do is speak to what it does in essence to our industry, without trying to tear the legislation apart.

Mr Tilson: I need your assistance if we're looking for specific amendments. Is this section appropriate or inappropriate? I'd like to know what your thoughts are. If you haven't had a chance to review it, perhaps at a later date you could—

Mr Renwick: Perhaps we could relate to it.

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Mr Patterson: We're in the process of preparing a clause-by-clause, written submission. One of the situations that occurs that would present difficulty is if an employer is unionized under the Steelworkers, for example—and coincidentally ABC Security Ltd is unionized under the Steelworkers—you would have Steelworkers from one bargaining unit, ABC Security Ltd, working the front gate and their brother Steelworkers working within that plant facility. We're not sure that doesn't create a conflict similar to having the security staff grouped in with all other employees.

We don't believe unionization is going to make security officers less able to perform their function or more likely to look the other way. We believe that conflict is going to be built into the system as it develops. It's an area that I don't think was looked at appropriately when security was then grouped into this act as wide open.

Mr Turnbull: Mr Patterson, you have stated that you don't believe, in the case of your industry, that it's going to lead to any new jobs or any lost jobs. But one of the other reasons the minister has stated that this bill is needed is

that he has suggested that it will improve labour-management relations. I find it somewhat strange in view of the fact that you are now going to have union members responsible for policing their own members. Does that not seem to be at variance with the intent of improving labour-management relations?

Mr Patterson: We believe that is detrimental to good labour relations at any given location. We are at odds with this bill, frankly, in that if collectivization of the security industry allows for better training, better standards of delivery and the ability for the members of our industry to better deliver life safety to all citizens of Ontario, we're for it. What we see is that this is not likely to be the thrust of the unionization movement. The thrust is going to be market share, and 95% of the market share is open territory. The needs of the employment site will be last on the list.

Mr Turnbull: Could you comment on the specifics of why your industry has been specifically excluded in the past from being part of the same union?

Mr Patterson: To speak to to the security industry internationally, there isn't a jurisdiction that I as a practitioner am aware of internationally in which specific legislation to govern the security industry doesn't make it separate, for a number of reasons. Outside of Canada, that legislation primarily dictates a number of specific guidelines. Effectively, you have a large collective agreement that deals with security and the provision of that service. That's throughout Europe and in the majority of jurisdictions in which there is legislation in the United States.

The model we used to have, I believe, protected all the workers both within the industry and outside of the industry. We've got a potential for a great deal of strife that doesn't benefit the employee, doesn't benefit the management, may benefit unions in additional dues but, I don't believe, is going to make for a better working environment.

We say there'll be no change in jobs. We consider that there's probably going to be a decrease in the amount of money available at the end of the day to pay the employee. Currently, 93% to 95% of the bill that's paid in security is paid out in wage to the employees. I think we're going to get this legislation on the back of the employee, not on the back of management.

Mr Klopp: A couple of real short ones: Are you representing all the security guard associations in Ontario or Canada?

Mr Patterson: We're specifically not. One of the problems that we'd like to address to this committee is that the Association of Investigators and Guard Agencies of Ontario, which in fact does represent all of those agencies in Ontario, was not given an opportunity to speak before this committee. I think it's a terrific oversight that hopefully could be addressed. We have a far broader membership than that specifically, although some of their members are members of our association.

Mr Klopp: Okay, so you're representing one organization. Under the old act, you said approximately 5% of the security guards in Ontario are unionized now.

Mr Patterson: That's correct.

Mr Klopp: Under the present act, it was an opportunity that could be used, right? Okay. Under the proposed changes, as I understand it, if you want to be a guard—I don't think it forces anybody to belong to anything; it's just allowing fair-minded people to have options—you're allowed to belong to any union.

You mentioned internationally there is no such thing as this kind of legislation. International is wonderful, but are there any provinces in Canada that have the same kind of legislation we're proposing? It doesn't make the news, but that doesn't mean anything. Are there any other provinces that have this kind of new opening that is coming in this proposed legislation change?

Mr Patterson: There's been an active undertaking by the labour movement to unionize security officers across Canada. The one province that has the absolute opposite legislation to this is Quebec, and it works on essentially a tripartite agreement. The minimum standard for the provision of security services and its payment and the conditions under which those employees work are prepared annually on a cooperative basis between labour and the security industry, and it's provincially mandated. There are certainly some segments of our industry that would like to see something along those lines, because it's enforceable, because it's a provincial standard and they have a say in how it's dictated. So the opposite is there that there's a cooperative venture.

There isn't a case, I don't believe, that security officers are barred from joining unions anywhere in Canada, and the labour movement is currently attempting to unionize across the country.

The Chair: Thank you, Mr Patterson and Mr Renwick. You've brought yet another perspective to this process and we thank you very much for that. I want to indicate, as you've heard us tell others, that we've received over 1,100 applications from individuals and groups to participate. Obviously not all of those people can be accommodated. All of them are welcome to submit written briefs, and you have indicated you'll be supplementing your attendance here today with a written brief.

I would indicate to those people who feel they've been erroneously overlooked to appeal any decision that was made to the clerk's office, indicating why they would be important to the process; not that anybody is unimportant, but an opportunity for those people to perhaps explain in a little more detail why their insight would be that much more significant given *viva voce* than merely written.

Mr Patterson: If that's an open invitation for the guard industry to speak to you, I'm sure they're going to avail themselves of it.

The Chair: I didn't say that. I said exactly what I said and nothing more.

Mr Patterson and Mr Renwick, all of us appreciate your coming and taking the time and your interest, trusting and hoping that you'll keep in touch. Take care, gentlemen.

Now we turn to Mr Offer's motion. Did you want to speak further to that motion, Mr Offer?

Mr Offer: Yes. Thank you very much, Mr Chair.

The Chair: You've served a written copy. I appreciate that. Thank you. It's not mandatory but it was a nice courtesy.

Mr Offer: I'm asking whether all members have received a copy.

The Chair: It's being distributed now.

Mr Offer: It's a very brief motion that this committee formally request of the three House leaders authority to extend its hearings on Bill 40.

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I'm mindful of the time of day and the length we have been sitting. I think it is clear that we all recognize there is a motion of the Legislature which gives to this committee five weeks of hearings. It has been decided that three of those weeks are going to be in Toronto and two are going to be travelling. To my mind, it is clear that as a result of the publications made in the newspapers, we now have something in the area of 1,100 requests to be heard. We do not have given to us the time to hear these.

I believe the number of individuals, groups and associations that wish to be heard underlines the importance they attach to this bill. Whether they be for or against, whether they have but one particular aspect of the bill, they want us to hear their positions, concerns and feelings about this bill. The limited time we have been given severely undermines, I believe, the ability of this committee to receive a full hearing from those people who wish to be heard.

My motion asks that this committee—and I ask members of this committee to please support this motion, because we are going to be requesting of the House leaders authority to extend hearings on this bill. We have 1,100 people who want you to vote in favour of this motion.

The Chair: Mr Wood, do you want to speak to it or are you deferring to Ms Murdock?

Mr Wood: I'm concerned, first of all, that a motion like this would come forward, because there are, I believe, over 260 people or groups that are going to be able to make presentations. The other ones are going to be able to make written presentations. I'm just surprised that Mr Offer would bring forward a motion of this kind when the three parties have agreed on the five weeks of hearings: three weeks in Toronto and two weeks on the road. This decision was made in the Legislature quite some time ago. But I'll keep my other comments to myself for now and turn it over to Ms Murdock.

The Chair: I want to indicate before anybody else speaks that the clerk advises that the current schedule accommodates 240 presentations. As I understand it, that's over the five-week period.

Mr Offer: On a point of information, Mr Chair: Is 240 just for the Toronto hearings or for the total amount?

The Chair: Five weeks of hearings accommodate—

Mr Offer: And the 1,100, just prior to Ms Murdock speaking, is basically Toronto-oriented? It may not be exclusive to Toronto, but mainly Toronto?

The Chair: The 1,100 are all the people who have communicated with the clerk's office to date. Obviously

you can expect some of those people to be unavailable, but you can also expect more people to be requesting. Many of those people are clearly from the out-of-Toronto area, but a large number are clearly in Toronto. The clerk hasn't got with him right now a very specific breakdown.

Ms Murdock: I'm not going to support the motion, mostly because—I mean, the numbers are not a surprise. Particularly having done the consultations, I can tell you that we ended up with somewhat a similar situation and ended up extending the Toronto hearings. I'm glad that we are spending three weeks here, because there were so many from this particular area.

In that respect, we discussed this very issue in subcommittee on one occasion I was present and at another subsequent subcommittee meeting afterwards. We've also discussed this in committee, plus it's been voted on in the House in terms of a resolution put forward by our House leader. Albeit a very decisive, partisan vote, still in all our caucus made it quite clear that there were 63 people who voted in favour of the proposed resolution. That's five weeks. I'm not prepared to extend it.

Mr Tilson: Ms Murdock referred to a consultation process that she went through earlier with the minister. Of course, one of the major criticisms that has been directed towards your government is that that consultation process was totally inadequate, that there were a considerable number of people who wished to be heard and that they were not able to be heard.

I'm directing my comments to the government members, who appear to be taking the position that they're not going to support this resolution. They have boasted many times as to how excellent their consultation process is. I therefore challenge you that when you have 240 applicants out of 1,100—and I suspect that will be climbing, as you have indicated, Mr Chair. I suspect that once we get out into the country, there will be many more applications put forward. That's approximately 25% of applications that we're hearing.

Mr Chairman, through you to Ms Murdock, you're talking about what went on in the House. Clearly the government has a timetable. There's a timetable as to how long we're going to debate in this House, how long we're going to debate it in committee and how long we're going to debate it in this committee. There is no question, I think, as referred to by one of the Liberal members in the House, that you have a timetable of four months from the date of introduction to the date of proclamation, and you're going to stick to that timetable.

I think that Mr Offer's motion is challenging you to broaden your consultation process, which has been criticized in the past, and to hear more than 25% of applicants. There has been no real substantive consultation process of both business and labour in the past, where all groups sit down and consult on this subject. There's been none of that, so that the whole consultation process, from the paper through to the introduction of the bill, through the debate, through the time restrictions that are being put forward, and the new rules that are being put forward are designed to ram this thing through as fast as possible.

I will say that if you look at today as an example, with each of these applicants there has been very little repetition that has been put forward. Sure, there's been rhetoric from different groups that may appear, but with almost all of them the specific points that they have raised—whether you're talking about the children's aid society or security guards, all have their story to tell.

I submit to you that if you look at the list of the 1,000 or 1,100—and it's climbing—that there are many more who will have their story to tell and it won't be heard. Your answer is, "Oh well, write us a letter." I say that's not enough, that we as legislators, if we're putting through a piece of legislation that on your own admission is perhaps one of the biggest pieces of legislation that your government will ever introduce, surely—well, I know Mr Klopp is probably suggesting you're just getting warmed up, which terrifies us. I will say that to date that appears to be one of the biggest pieces of legislation that you have considered and I hope you will allow the consultation process to expand and that this will be conducted in this committee.

The Chair: I do want to indicate that the clerk has advised that the deadline that was indicated in the ads, the deadline for submissions, as having been last Thursday and that the vast majority of the applications were received prior to that deadline—properly so—but that since the deadline approximately 100 applications have been received, as recently as today. There's clearly been a trickling of the applications, but the most recent one of the 100 has been as of today. I tell you that on the advice I received from the clerk. Now, who else wants to speak on the issue?

Mr Tilson: We are still only hearing 25% of the applicants.

The Chair: Who else wants to speak to the issue? I'm trying to give that information to the committee, so that they have information to argue with.

Mr Tilson: Chair the meetings; don't make statements.

The Chair: Don't argue with me. Who else wants to talk to the motion?

Mr McGuinty: I'll speak to the motion, and obviously in support of it.

Just so that we maintain some perspective on this, when we're talking about 1,100 representatives, we're talking about 1,100 representatives of different groups. The people we have heard from to date have represented tens of thousands of Ontarians. It is likely that the remaining 900 groups we will not be hearing from will be representing hundreds of thousands of Ontarians. That is probably without precedent, the numbers of people who are anxious to meet with us. That number is probably without precedent in the history of this Legislature. I may be corrected on that, but I don't believe I'm mistaken.

Something else that is without precedent obviously is the nature of this legislation and the controversy that has been generated. I think the government has an obligation to ensure that it hears from all parties that wish to express a concern. If the government chooses not to do so, then that will be on its head.

2050

I think it's appropriate that we bring the motion forward, that we speak to it at this time and that the government members, who are going to carry the day in this, fully understand that if they choose to—we're cutting out some 900 representations here—then they have to understand they're doing that knowingly, to recognize the consequences of that, to understand the fallout effect this will have in Ontario at large.

We have enough difficulty at the present time with ensuring that our public lend us their support. They're concerned that we don't listen to them, that we're not interested in what the man or woman on the street has to say. Here we have a public forum in which the specific purpose is to hear from these people and we're saying no. We're not prepared to make an effort to extend the time beyond the five weeks that were originally allotted. It's my understanding when that alleged agreement was originally struck, the people involved in making the agreement had no idea we would be receiving requests from 1,100 presenters. Things have changed; it's time to reconsider.

The Chair: Any further debate on the matter?

Mr Huget: I'd just like to make it clear that I think the government has taken an unprecedented step in terms of consultation prior to the drafting of this legislation. Over 350 groups were heard from. Add to that another 240 in this set of hearings, and add to that the possibility for each and every group which does not appear or which did not appear at consultations to submit written proposals.

Far from being restrictive and far from being not open, I think the process, as far as I'm concerned, has been very open and very consultative. If you look at the potential for the 350 groups which were heard during consultations with the ministry and 240 now, that's two thirds of 1,100. I think that's being very fair and I think there is an opportunity for those who have not appeared at one session or another, whether it's the consultations or these hearings, to submit written briefs as well and I do not buy into the argument that there is restriction here. In fact, I do not know where there has been this level of consultation.

The Chair: Further debate?

Mr Offer: Recorded vote.

The committee divided on Mr Offer's motion, which was negated on the following vote:

Ayes—5

Cleary, McGuinty, Offer, Tilson, Turnbull.

Nays—6

Fletcher, Huget, Klopp, Murdock (Sudbury), Ward, Wood.

Mr Turnbull: I have a motion. The clerk has copies of my motion. It is that the Minister of Labour table all documents, briefing notes, correspondence and memoranda in his possession or the Deputy Minister of Labour's possession from a meeting between the Deputy Minister of Labour and American business representatives that took place in Detroit, Michigan, on or about June 8, 1992. The material should include any briefing material prepared in

advance of the meeting, including a list of participating American companies and any summaries, comments or correspondence that were generated after the meeting took place.

The Chair: You have courteously provided copies of that motion, which have been distributed to the members of the committee. Do you want to speak to the motion?

Mr Turnbull: Yes, indeed. The government committed to open government when it was elected. The minister has strenuously rejected the impact study by Ernst and Young and has also rejected such information as the poll by Environics Research, both of them among the leading companies in their fields in Canada. Yet the minister insists there will be no impact on the province. In light of this, it seems appropriate that at least we get some sense as to what has occurred in the ministry's own inquiry in the US. That is the thrust of this inquiry for information.

The Chair: Any other debate?

Ms Murdock: Actually, not debate particularly, more just information, I think. Anticipating what this was going to be, we contacted our staff and asked them to check with the deputy, because he had discussed it yesterday when he was here, and he was asked questions both by Mr Offer and by Mrs Witmer in regard to that meeting.

I know he made a presentation. He stated that he had made a presentation to about 30 American business leaders. All we'd have, as far as we understand it, would be his presentation notes. It was not a transcribed meeting. Hansard wasn't present or that kind of thing; it wasn't that kind of situation. I don't know what other notes, correspondence or memoranda you would be referring to. I can check and see with the deputy about getting a copy of his notes, but I wouldn't imagine they'd be much different than what he presented in the committee yesterday.

Mr Turnbull: So then you would have no objection to this?

The Chair: Ms Murdock, do you want to put that question to Mr Turnbull?

Ms Murdock: What I would ask is if we could table this until I can refer it to the deputy.

Mr Tilson: Who's running the show?

Ms Murdock: I'd just like to know what occurred, what date it was. I don't even know myself.

The Chair: Mr Turnbull, do you want to respond to that? Ms Murdock is forfeiting the floor.

Mr Turnbull: Yes, indeed. Ms Murdock has suggested she doesn't know the date. It's on the motion. The deputy spoke of this meeting in our briefing the other day and we would like a more detailed view of this. This is absolutely germane to our deliberations and it is normal practice among ministries and governments to keep some sort of minuted review of important meetings, particularly with other countries. It's not an unreasonable request. We're seeking information as to the impact.

The Chair: Ms Murdock, do you want to speak further to the motion?

Ms Murdock: I'm not prepared to support this until I have time to discuss it with my minister.

The Chair: Does anybody else want to speak to the motion?

Mr Tilson: Why don't we table it until tomorrow?

Mr Huget: I refer it.

The Chair: At that, it's just shy of 9 o'clock, in any event. The committee, as a result of the subcommittee's decision, which was adopted by the committee, is limited to 9 o'clock and so that would be adjourned in any event.

When does the committee propose to have this motion spoken to? The first presentation tomorrow morning is scheduled for 10 am and perhaps people can think about that and decide when they want to debate this motion further tomorrow. In any event, we're going to adjourn shortly.

I want to thank the committee members for their cooperation today. I want to especially thank the staff people: the Hansard people, who have put in extra hours; the translation people, who have been very patient with us, especially when there's been some antagonistic bantering, which has tried their patience and skills; and the legislative broadcast people, who have been patient and tolerant and helpful. Thank you, people.

We're adjourning until tomorrow morning, 10 am, when the public is invited and this will be televised one more time.

The committee adjourned at 2059.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

- *Chair / Président:** Kormos, Peter (Welland-Thorold ND)
- *Vice-Chair / Vice-Président:** Huget, Bob (Sarnia ND)
 - Conway, Sean G. (Renfrew North/-Nord L)
 - Dadamo, George (Windsor-Sandwich ND)
 - Jordan, Leo (Lanark-Renfrew PC)
- *Klopp, Paul** (Huron ND)
- *McGuinty, Dalton** (Ottawa South/-Sud L)
- *Murdock, Sharon** (Sudbury ND)
- *Offer, Steven** (Mississauga North/-Nord L)
- *Turnbull, David** (York Mills PC)
- Waters, Daniel** (Muskoka-Georgian Bay/Muskoka-Baie-Georgianne ND)
- *Wood, Len** (Cochrane North/-Nord ND)

Substitutions / Membres remplaçants:

- *Cleary, John C.** (Cornwall L) for Mr Conway
- *Fletcher, Derek** (Guelph ND) for Mr Dadamo
- *Tilson, David** (Dufferin-Peel PC) for Mr Jordan
- *Ward, Brad** (Brantford ND) for Mr Waters

***In attendance / présents**

Also taking part / Autres participants et participantes:

Arnott, Ted (Wellington PC)
Sorbara, Gregory S. (York Centre L)

Clerk pro tem / Greffier par intérim: Decker, Todd

Staff / Personnel:

Anderson, Anne, research officer, Legislative Research Service
Fenson, Avrum, research officer, Legislative Research Service

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Ontario

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Legislative Assembly of Ontario

Second session, 35th Parliament

Official Report of Debates (Hansard)

Thursday 6 August 1992

Standing committee on resources development

Labour Relations and
Employment Statute Law
Amendment Act, 1992

Assemblée législative de l'Ontario

Deuxième session, 35^e législature

Journal des débats (Hansard)

Jeudi 6 août 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant des lois
en ce qui a trait aux relations
de travail et à l'emploi

Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

Published by the Legislative Assembly of Ontario
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 6 August 1992

The committee met at 1000 in room 151.

LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992

LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

The Chair (Mr Peter Kormos): Good morning. It's 10 o'clock and we're ready to resume these hearings into the amendments to the Ontario Labour Relations Act. I want to tell people that these are public hearings. Today is the last day of hearings this week. They'll resume again on Monday morning at 10 am, carrying through to Thursday of next week.

The public is invited and encouraged to attend here at Queen's Park, room 151. As well, transcripts by way of Hansard of any or all of the submissions are available to the public by calling the clerk of the resources development committee or any MPP's office. Similarly, any of the submissions that will become exhibits are available to the public.

UNITED FOOD AND COMMERCIAL WORKERS, CANADA

The Chair: The first participants this morning are the United Food and Commercial Workers. Welcome and good morning. Please introduce yourselves, tell us your names and your titles, and then proceed with your submission. Please try to keep your submission to less than the first half of the half-hour so that we have adequate time for dialogue, questions and, sometimes, interesting debate.

Mr Tom Kukovica: Thank you, Mr Chairperson. Let me introduce ourselves. With me are Sue Yates, the international representative, who before becoming a full-time representative was a part-time cashier at Zehrs, and John Tremble from our national office, on a secondment from Labour Canada, as our research person. I am Tom Kukovica, the newly elected Canadian director of UFCW and previously a UFCW representative in Quebec for 16 years, and a food clerk previous to that.

It's not my intention to read the brief. You have it in front of you. You have, really, two briefs: the complete brief and an executive summary. I'd like to make some general comments and then specifically deal with three areas of great importance and concern to the UFCW. I will be making some comments in French, so please forgive me because my mother tongue is a little bit more French than English.

I'll be dealing with three specific subjects: anti-scab legislation; geographic relocation and part-time/full-time bargaining rights; and, one of the most important, the last one, the successor rights, which is an important issue for the UFCW.

Our brief contains two appendices for your information. Appendix 1 we have attached because we're part of the Task Force on Agricultural Labour Relations, so the recommendations are there. Appendix 2 has some labour board decisions on successor rights as they pertain to the sales of assets instead of the sales of business, which is a great concern to UFCW.

Let me, as some general comments, tell you that UFCW is pleased to have the opportunity to appear before you. United Food and Commercial Workers International Union, UFCW Canada, is Canada's largest private sector union, representing some 175,000 workers in this country. UFCW members are employed in more than 20 sectors of the economy, one of our largest sectors being the retail and including service, meat packing, food processing, brewing and beverage production and distribution, fishing, general merchandising, health care, shoe and leather and the banking industry. UFCW in Ontario represents more than 70,000 men and women.

Our union strongly supports reform of the act and commends the government for its efforts to ensure that the reform process continues to move forward as expeditiously as possible. The proposed reforms are essential if we are to address the fundamental changes in Ontario's economy that have occurred over the past 15 years since the act was last amended.

The business community is apparently oblivious to this reality and has chosen to be anything but constructive in its response to the proposed changes. Their tack has been to launch a vitriolic, offensive campaign consisting of misinformation, fearmongering, questionable public opinion polls and more. This campaign has only served to create a negative image of Ontario's economy, not only in Canada but around the world.

The proposed legislation is neither radical nor revolutionary; it's merely attempting to provide basic rights to workers in a modern economy of a democratic society. The reforms are designed to bring the province of Ontario into step with legislation which, for the most part, already exists in other jurisdictions in Canada.

Let me now deal with the anti-scab legislation, or the replacement workers. We would like to commend the Minister of Labour for his proposed amendments in this important area. While this section of the proposed legislation has solicited many negative reactions verging on hysteria from employers, we believe the amendments go a long way towards creating fair, more balanced rules for workers

who opt for legal strikes and who are victims of an employer lockout.

Mon expérience dans la province de Québec surtout, où j'ai été représentant avant la loi anti-scab et après la loi anti-scab — je peux vous assurer que l'expérience que j'ai vécue dans cette province, lorsque le gouvernement péquiste de René Lévesque a introduit la législation anti-scab, a eu l'effet très bénéfique de trois facteurs.

Premièrement, il a réduit totalement la violence sur les piquets de grève, de façon dramatique.

Deuxièmement, il a créé un climat de négociation où on a pu régler, à 99,9 % presque, chacune des conventions collectives sans avoir recours à la grève ou à un lockout, parce que ça incitait les partis à être beaucoup plus raisonnables, à être beaucoup plus attentifs chacun de son côté aux attentes des deux partis. La menace à ce moment-là de la grève ou d'un lockout a donné certainement de la sécurité aux deux parties : à la partie syndicale parce qu'il n'y avait plus de briseurs de grève et qu'on ne pouvait pas engager des personnes pour faire l'emploi de ces gens-là ; et à l'employeur parce que ça lui donnait certainement un signe, de dire qu'il fallait qu'il s'assoie sérieusement à la table de négociations pour régler ce contrat-là au lieu de recourir à des tactiques autrement.

Le troisième facteur qui est très important, à mon sens, et qui a créé tout un remous en Ontario, c'est que tout le monde parle de chiffres fantastiques, qu'il n'y aura plus d'investissements en Ontario, qu'on va perdre tous les investissements étrangers et qu'on n'aura plus de coopération entre l'employeur et le syndicat.

L'expérience québécoise, laissez-moi vous dire, parce que j'en ai vécu de première main, m'a indiqué tout simplement que c'est totalement faux. Aujourd'hui, j'ai des employeurs que je représente en Ontario qui me disent : « Bien, si on ne règle pas, je vais m'en aller au Québec. » Je leur dis : « Si tu t'en vas au Québec, mon cher monsieur, il y a la loi anti-scab. Comment... Tu fonctionnes très bien », et ils disent : « Je n'ai pas de problème avec la loi anti-scab. » Alors, toute cette perception qu'il n'y aura plus d'investissements et que ça va être négatif pour le commerce et que ça va être négatif pour l'industrie et pour l'économie de l'Ontario est totalement fausse.

Au Québec, ça a créé toute une nouvelle façon d'avoir de la coopération entre l'employeur et les syndicats. C'est de la concertation qu'il y a. Il y a des tables de concertation, pas seulement sur la négociation, pas seulement sur la convention collective mais sur l'économie du Québec, sur des points principaux. Alors, ça a créé un climat très important, très bénéfique. Je voudrais rassurer tous les employeurs dans la province de l'Ontario qui ont des peurs fantastiques que c'est tout à fait illogique.

There are three concerns we have with the anti-scab legislation which we would like to point out to you. The first one is the requirement that during a strike vote, you're saying that at least 60% of those voting support strike actions before the restriction of hiring replacement workers will apply. We respectfully submit that, as in Quebec, a simple majority of those voting should be the rule. Unions are very democratic organizations, and a simple majority should be sufficient.

1010

The second aspect that we feel should be included in your draft is that during a strike or lockout, employers should be prohibited from using supervisors and employees outside the striking bargaining unit who are employed at the strike location. We totally agree with the other aspect, that of emergencies, and we have no problem with that. I can tell you that in Quebec that works very well.

The third area that we would like to point out to you in a strike is the definition of a "strike." On several occasions, the government has indicated its commitment to allowing employers and workers to agree on terms and conditions of employment without intervention from outside parties. That definition refers to a strike as any work slowdown or stoppage engaged in by two persons or more on a concerted basis, regardless—and I think that's what we want to point out to you—of whether the parties have negotiated the right to engage in that activity under the collective agreement. We find that there are two different definitions because that same definition doesn't apply to a lockout.

Let me now go to the second point of our concerns, which is geographic relocation. UFCW Canada believes that a trade union's bargaining rights and employees' rights which have accrued under a collective agreement should not end when an employer decides to relocate in Ontario. Therefore, UFCW Canada recommends that the board be given the power to amend the geographic description in the certificate or recognition clause of the collective agreement in appropriate circumstances.

This provision will apply only to a situation where the employer has no existing employees at the new location and to any situation where at least 50% of the newly constituted workforce consists of employees previously employed at the old location. The act should spell out some of the recommendations that we are putting forward:

Establish a statutory right of workers to be offered employment at the new geographic location where any of the work performed at the old location is transferred; require reasonable advance notice of transfer, at least six months; provide full protection of the bargaining unit and the existing collective agreement where 50% or more of the newly constituted workforce consists of employees from the old location. The date should be the date until the location is completed.

The board should be empowered to hold a representation vote to determine if a majority of the old employees at the new location favour the incumbent trade union where less than 50% of the employees from the old location exercise the right to relocate. We believe that is an area you should be looking at.

UFCW probably represents more part-time and more women than any other union in this country and in Ontario. We commend the government for introducing the part-time/full-time and appropriate bargaining units. As the UFCW represents a large number of those workers in the service industry, which is characterized by a large proportion of part-time workers, the traditional separation of full- and part-time employees into different bargaining units is clearly no longer applicable today and only serves to deny bargaining rights to women, who make up the majority of the part-time workforce.

Let me just point out to you something so you understand what the service or retail industry is. In the 1960s, there used to be 40% part-time, 60% full-time. In the 1970s, it was 60% part-time and 40% full-time. In the 1980s, we went to 70% part-time, 30% full-time. In the 1990s, if you think there are a lot of full-time people in the retail sector, you are totally wrong. It's up to 85% and 90% part-time people working whom we represent in the retail industry and service industry.

We strongly support the Minister of Labour's proposed amendment which will direct the board to find a single unit of full-time and part-time units appropriate for collective bargaining. This will strengthen the ability of part-time employees to negotiate improved benefits, compensation levels and job security, aspects which are critically lacking under the current legislation.

Let me now deal with the last issue, the successor rights, which is probably one of the most important issues that we want to raise because we have been hurt as a union more than anybody else in this area and we are really concerned about the amendments to this area, because they don't go far enough in the problem we're living.

The UFCW is concerned, however, that the proposed amendments will not adequately deal with situations where there has only been a sale of assets and a purchaser conducts similar business activities on the same premises. Under the current act, this kind of transfer has not generally been deemed to be covered by successor rights, and you have in appendix 2 a whole example of board decisions where somebody has moved out of a food store or a retail outlet in a shopping plaza and there was no sale of business as such. If it was a Miracle Food Mart store or an A&P store and now it's a Super Tops food store, the only thing they bought was maybe some shelves and they sublet the premises.

If the employer had other stores in the province or in the area, the people we represented in that store were moved to other locations, and now this new employer is still doing the same kind of business. It's a food store again, no change, and he's attracting the same customers as the previous one. The board has found that it's not a sale of business, it's a sale of assets. So each and every time there is a closure of a store and somebody buys that store and puts out the same kind of operation, we're out and we can't represent those workers.

That is tragic, especially for us, where that's exactly our rule that we have to live with, and those are the issues. On almost every day there is a sale of assets but there is no sale of business, and we find ourselves in a position where we have to go back and organize that store again and again. We want successor rights.

What we are proposing to you is this, in section 64: "sale of business" includes a significant sale of assets to an employer where the employees are engaged in types of or similar work at the same premises the vendor of the assets conducted its business."

It's one of the important amendments that we're looking for, because it's not there.

The Chair: Thank you, sir. Mr Carr, four minutes.

Mr Gary Carr (Oakville South): I'll go first. I want to thank you very much for your presentation. Tom and I had a chance to work together at the last Conservative convention in Ontario on the Sunday shopping issue and he was very helpful in trying to bring ideas forward. So again, I want to thank you very much for your presentation today. Unfortunately, that battle was not won, but I guess maybe it's not done yet in your eyes.

I was interested in the fact that you talked about that, as a union, you're in favour of the democratic process. I was interested in your comments on the secret ballot for certification. Are you in favour of the principle of a secret ballot for certification of a union?

Mr Kukovica: I think it's an insult to the working men and women of Ontario, or of any place, to think that when you as a union go out and canvass and organize and sign people up, the people can't make an intelligent decision based on the facts they have, which we give in full. We give our constitution, we give our bylaws, we give our structures and we give all kinds of pamphlets that we have here that we can show you. We give all the facts, so the people who are making that determination and are signing that card are making a very intelligent decision. I think that is the decision they are making, so if 50%—that's our belief, not even 55%—but if 55% of the people sign those cards, I don't see why we need a vote.

1020

Why are we targeting only unions? When a company president joins the chamber of commerce and signs that application to join, is there a vote? By whom? When a medical professional or any other professional signs an application to join a professional group, is there a vote? When you join the Liberal Party or the Conservative Party, is there a vote? You are making a decision based on the facts, based on what you believe is the right decision. If the majority of those people decide—and here it's 55%; in other jurisdictions it's 50% plus one—I think it's an intelligent decision people are making and I believe we don't need those kinds of votes.

Mr Carr: But surely—and your union might be one that does give all the information—one of the reasons we introduced the provision for automatic certification at businesses is that if they get involved and intimidate, the penalty is automatic certification. Businesses would come before them and say, "Of course, we're a good company and we care for our employees," exactly like you did. There may be some unions that don't. Intimidation tactics could be used. They may not tell people what exactly they're signing, particularly when there's no money involved.

I have a big problem with your saying, "We're a democratic union," and yet through secret ballot, where there can be no intimidation by either side, you get the true wishes of the people. As I said in my speech, I don't always like what happens in an election. September 6 wasn't exactly what I like in terms of an election, except what happened in Oakville South, but in the process, through secret ballot, you get the true wishes of the people.

The statistics I've seen have shown that we're approximately where we should be in terms of the number of

people who want to join unions and the ones who do not. The last poll I saw was about 61-37—61% don't; 37% do—and that's historically where we are.

Mr Derek Fletcher (Guelph): Thank you for your presentation, and I'll get right to the point. You've had a lot of experience in Quebec and we've heard a lot of the stories about how Quebec laws aren't working. Can you let me know what your experience is with the Quebec law as far as replacement workers are concerned and how you feel the law is working as far as you're concerned? Without comparing it to what we're proposing, what is happening?

Mr Kukovica: I have lived in Ontario since 1984, but before that my experience with anti-scab legislation was in Quebec. For a while we had the problem of people who were not part of the bargaining unit. There was an amendment put forward in 1984 or 1985 where we had a problem with people who were not in that bargaining unit coming in and replacing people in that bargaining unit. There was that problem. That was corrected.

Since then, the experience of Quebec, at least for us in UFCW, is that we have had really minimal strikes. As I said, I think both parties realize they have to get a collective agreement. If you are in retail food, if you have to close the store, there is no money coming in, so it has made both parties have greater respect and they are coming into negotiations with a much greater interest in dealing with the issues, instead of trying to say, "I'm going to strike," or, "I'm going to lock you out," and there being violence on the picket line. That has all gone. If you're asking me if there has been any negative impact on the business, let me tell you, absolutely not.

Mr Brad Ward (Brantford): Tom, I'd like to thank you for your excellent brief. I think it's an example of the very professional staff that you have in preparing it. In my own example in Brantford, one of my best friends, Brian Noonan, is well respected in the community and is an excellent representative of the UFCW as well.

My question is more on the changing workforce. We all recognize that it has changed dramatically since the 1970s, that the labour laws in this province have not been updated significantly since then. What we're trying to do, as a government here in Ontario, is foster greater cooperation among labour, business and government. We think that is the correct direction to take if we're going to tackle the economic challenges we're facing in the 1990s and into the 21st century.

Why do you feel it's important for working people, if they are represented by trade unions, to be involved in shaping society, in working with business and government in tackling the economic problems we're facing? Why do you feel it's important to be a player at the table in these very important discussions and policies that will be shaped now and in the future?

Mr Kukovica: Because I think we believe that unions and the working men and women of Ontario are the greatest assets of our economy and they have to be part of that decision-making process of consultation.

We at UFCW strongly believe in dialogue, in being full partners, and that is one of the biggest difficulties we have

with the business community. Not all, because we have some examples of good cooperation with some of our major employers where we have some final consultation processes going on: the public policy forum we just did on the grocery product manufacturing industry, where we took all those employers and ourselves and are working towards finding solutions to the problems in the grocery industry and trying to cooperate together.

We're doing the same thing with the retail food industry, where we are shaping and trying to come up with ideas on how to bring about better cooperation, better understanding, on how we can invest more dollars in the economy, how to open new stores.

So we are part of that process, I think. As long as the employers and the business community give us that respect and say that we are equal partners, I think that will be the success of the economy of Ontario. That's the difficulty we always have, because employers don't recognize unions as legitimate partners in the economy. That's our difficulty, and I hope one of these days they will recognize that.

Mr Dalton McGuinty (Ottawa South): Thank you for your presentation. One of the things that was put forward by the Ontario Federation of Labour—and I see you've adopted that position, or you may have come up with it independently—is the position you're taking with respect to successor rights. I must say that without having given it too much thought, I'm attracted to the proposals contained in Bill 40, and it seems, on the face of it, fair that a business person buying a business should be required to step into the shoes of the previous owner and be held responsible or accountable for any of the liabilities associated with the business, and have to step into the shoes in terms of any proceedings that were ongoing with the union.

However, you want to extend this further. This is rather revolutionary and I don't believe this is in place in any other jurisdiction, unless I'm mistaken.

Mr Kukovica: It is in Quebec.

Mr McGuinty: In the province of Quebec?

Mr Kukovica: Absolutely. There is no problem in the province of Quebec with that.

Mr McGuinty: Traditionally, business people have always had two choices. They can buy the business as a going concern, with all the inherent liabilities, or they can buy the goods, buy the assets. But what you're suggesting is that we're going to remove that choice. There are always going to have to be some associated liabilities, and I don't really like to use that word, but they're going to have to buy the workforce, so to speak. That'll come as part of the package.

We're removing a bit of the flexibility that has, to this date, been present in the marketplace. Do you not see that as some kind of restriction on the freedom of the business to just simply buy assets?

Mr Kukovica: When you say buying the assets, they have to carry the workers. You have to understand that workers, in some instances, are no longer there. What we're asking is such right to the premises where the business is conducting the same kind of business. You have to remember that if a Steinberg's or an A&P store or a Loblaw's

store which is in a mall is subletting or leasing that space and suddenly decides, for whatever reason, to close that and say, "I'm going out of here," and somebody else comes in, say, Super Tops, and puts that store in there, it's the same business. It's still a retail food store. What we say is: "That's our case. That's our history. That's how it operates in Ontario."

1030

We need the successor rights because we had a collective agreement there and it's the same kind of work. When we got certified, we got certified for that kind of work, for that kind of industry. We're not asking you, if that store operates something different, to allow us successor rights. We're saying if it's the same or similar kind of business. If it's a retail food store, what's the difference? Now the sign is not A&P, it's Super Tops, but they haven't bought the business; they just bought the assets. That's what happens in reality in retail. You very seldom see the sale of a business. You'll see more a sale of assets.

Mr Steven Offer (Mississauga North): Thank you for the presentation. In the area of replacement workers, one of the shortfalls you outlined was that in the context of democracy, a simple majority of members voting should be sufficient. My question is not on that issue but on that same principle, the issue of part-time/full-time workers.

Under the legislation if, for instance, there is a workforce of 100 individuals of which 75 are full-time and 25 are part-time, and if 55 of the 75 full-time workers vote in favour of a combined unit and no part-time worker wishes to be part, then under this bill they will still be part. I wonder if you can help me out as to how we can reconcile that principle of majority with the aspect of section 6 dealing with the full-time/part-time combined unit.

Mr Kukovica: My understanding—and you may correct me—is that if you have 55% of the full-time and you don't have 55% overall, the board cannot combine them. If you have 55% overall, then there is a combination.

In your example then—it has to be 75 to 25 equals 100—you have to have 55 people. But you say, "What happens if only 55 are full-time and only those are signing?" Then that's the reality. We believe in democracy. You have to understand the historical reasoning behind the full-time/part-time, why two bargaining units, which was done years ago for no good reason. The only reason the board found was that both groups did not have the same interests.

The reality today is that those two groups have the same interests. They are working in the same premises. A customer could not differentiate between a part-time cashier and a full-time cashier. They are both doing absolutely the same work but don't have the same rate of pay and don't have the same benefits. That's the biggest problem, because the board has always split the part-time and full-time unit. What we're saying now is that when you organize a unit or a store, if you have the majority, whatever the composition is, if you have 55% of the full workforce, I think that is a very democratic principle and you have the majority of the workforce.

In your example, where you said it's going to be 75% full-time and 25% part-time, I think you should reverse your example, because it's usually the reverse.

The Chair: Thank you, sir. I want to thank you, Sue Yates, Tom Kukovica and John Tremble, for coming here this morning and speaking on behalf of the United Food and Commercial Workers. Obviously your membership is a significant constituency which has a vital interest in this legislation. We appreciate your interest and their interest and your willingness to participate. We trust you'll be keeping in touch.

Mr Kukovica: Thank you very much. You'll be receiving a French copy of the submission very shortly.

UNITED STEELWORKERS OF AMERICA

The Chair: The next participant is the United Steelworkers of America national office, Leo Gerard, national director. Perhaps you'll seat yourself at a mike. Please start with your comments, sir, and try to leave some time at the end of the half-hour for dialogue.

Mr Leo Gerard: I certainly want to leave some time hopefully for a constructive exchange of views. I should identify myself. I am Leo Gerard, national director of the United Steelworkers of America. I also am a member of the Premier's Council on Economic Renewal—not only the current one, but the previous one—since its formation and have spent a lot of that time thinking about industrial strategy and workplace reorganization and restructuring.

I also want to tell those who may not know that the United Steelworkers of America is a union that is very diverse, represents almost every sector of our economy and has about 160,000 members and that all the elected officers of our union are elected by a referendum vote of the membership.

I also want to let you know that my colleague, district director Harry Hynd, will be making additional comments on what I would call these more substantive issues of the legislation. As well, my understanding is that as of today about 150 to 160 individual Steelworkers members have asked to appear before this committee. I hope you give each and every one of them half an hour. I'm sure they have something constructive to add.

My comments will be, I think, much more in the line of some of the underlying principles that are in the proposed Bill 40. I think that for many people this is not simply an issue of labour law reform, but an issue of fundamental democratic principles that allow workers the only proven vehicle in a democratic society that allows them to participate, on an ongoing basis, in decision-making in their workplace: the collective bargaining process.

I would point out to members of the committee that it's fairly well accepted internationally that a symptom or an example of the level of your democracy is the ability of workers to participate in collective bargaining. I would suggest to you that you cannot find free democratic collective bargaining in undemocratic societies. The collective bargaining process itself is an example of the expression of democracy, of allowing workers to participate through the collective bargaining process and have a voice in collective bargaining issues, workplace issues, and now the Supreme

Court of Canada also says that in political action, workers are allowed to do that.

I imagine that not very many people in this room will be surprised that I, personally, and my union support Bill 40. I would also be on record to say there are many areas where we think it doesn't go far enough, and it's already gone through probably the most elaborate, ongoing consultation that has ever happened to a piece of legislation, certainly in my adult lifetime, or has been in the public eye longer than anything I could imagine.

1040

You've heard from the president of the Ontario Federation of Labour. We support his position and the position of the Ontario Federation of Labour.

I want to be on record, personally and on behalf of my union, to register with this committee our complete dismay at the level of attack on the trade union movement itself and the concept of unionization by the business community, by the opposition parties and in fact by some members of this committee. The record will be very clear that this is not an attack on labour law reform; it appears to be an attack on the labour movement.

Those who would argue that somehow this legislation tips the balance of power clearly have no understanding of what a balance of power is. When it takes six, seven, 12, 15, 18 months for workers to get certified and then almost as long, in many instances, to get a collective agreement, please don't preach to me about the balance of power when the fact is that workers have to sneak around in back alleys and washrooms in the dark of night to sign a card to join a union, which is recognized as an expression of democracy, for fear of getting fired, harassed and punished. Don't talk to me about tipping the balance of power, please.

I also want to say to you that our union has done a lot of work in looking at comparative economic models. Those who would attack the fundamental right of workers to join unions, those who would attack the right of those workers to participate constructively in collective bargaining and legislative reform are, in many cases, I want to remind all of this committee, the same people leading the same corporations or different people leading the same corporations, who beat up workers and who harassed workers when unions were being formed.

They're the same employers and employer groups who, in the early 1970s, said we would destroy Ontario's economy if we dared to give workers joint health and safety committees and the right to refuse unsafe work. They're the same employers who hired consultants and hired spies, which we proved in open court, at Radio Shack. They're the same consultants and same employers who attacked—I wish he were here—former Labour minister Greg Sorbara's original Bill 208 which, I believe personally, led to his removal as the minister. He may want to differ about that, but it still would be my view. Those are the same employers who silently acquiesced in free trade and told us we'd have a better society. I would suggest to you that in all the issues I've put before you, ask yourselves who lied to the public. It certainly wasn't working people and their institutions.

Last but certainly not least, so I can leave some time for dialogue, I want to commend to you two reports, one called *Empowering Workers in the Global Economy*, where the United Steelworkers of America brought together leading economic thinkers from North America to talk about the role that workers and workers' organizations can play in trying to rebuild the destroyed industrial base of Ontario.

You may find some of the presentations in this document informative. I should say to you they're not necessarily the Hansard; they may be almost as accurate, though. They're of a conference the Steelworkers held that involved bringing together people like Ray Marshall, former US Secretary of Labour, Manfred Muster, a leading economic thinker in West Germany, Professor Gary Herrigel and leading economic thinkers on workplace organization.

In addition to that, I want to commend to you a report that the Steelworkers commissioned in 1991. That report is called the *Report on Partnership and Participation in the 1990s: Labour Law Reform in Ontario*. That report was done as an analysis of the original labour presentation to the Burkett consultation that went on, one of many on this legislation.

The report is written by a professor, Lord Wedderburn, who I suggest to you is one of the most internationally recognized experts on comparative labour law and is a professor of commercial and business law at the London School of Economics. Lord Wedderburn is very careful to point out that labour law is not the only issue by which you can judge the success of economic societies, but he also points out that there is firm evidence which indicates that in most countries that have active labour relations policies which encourage social consensus, these policies advanced the economic performance of that nation's economy.

I would suggest to all members of the committee that you may find it enlightening to read an analysis, Professor Wedderburn's view of what were certainly far stronger recommendations on labour law reform, and to come to his conclusion on the report of the Burkett committee that there's nothing to get excited about, that there's nothing new that's not in place in some other democracy.

Without dealing with the particulars of the legislation, I would suggest to you that this is a very important piece of labour reform when you look at the rebuilding of Ontario's economy, and that the business community's hysteria and the hysteria of some opposition members has absolutely nothing to do with the economic impact of this labour law reform but has a lot to do with the fact that they're opposed to workplace intervention by trade unions in the first place. I hope that each and every one of you would reject that, and each and every one of you would support this piece of legislation.

Mr Bob Huget (Sarnia): Thank you, Mr Gerard, for your presentation. I look forward to studying both the reports you provided us with this morning.

I personally am of the view that the workplace in Ontario, certainly in order to remain competitive and to lead Canada's economy, will have to be very much a very different place. I believe that shareholders and stakeholders, stakeholders being workers and organizations that represent

workers, need to have a legitimate say in the operation of that workplace. That approach will be industry's and workers' salvation, the future economic direction of the province.

People who oppose this legislation seem to want to imply that somehow, by workers organizing, they will lose a competitive advantage, that somehow workers, if they're given the choice to organize in workplaces and industries, cannot be competitive. Business points to a greater need for worker openness, flexibility in the workplace, competitiveness and productivity, and again I have to state that opponents of this legislation seem to want to imply that if workers organize, the competitive factor will be lost and we cannot compete.

I'd like your view on that issue and I would also like specific examples, if you can provide them, of where your union and workers in your union are working on the productivity-cooperative approach to financial success, not only for the businesses they work for but for themselves as well.

Mr Gerard: It's very difficult to continually have to try and defuse the big lie. It's a concept that if you say it long enough, people might eventually believe it. The fact is that the issues that lead to competitiveness or productivity improvements have a lot more to do with management decision-making than the role of unions.

In fact if we look at the way work is organized in the workplaces—some of that is in the yellow book I gave you—that work has been organized by managers in Canadian industrial society, North American industrial society, quite frankly, using the concepts of Frederick Taylor, Taylorism. It's been organized very hierarchically, with lots of layers of management, breaking jobs down into their smallest component so that managers could tell workers what to do and workers were supposed to respond.

It might be interesting to note that of the major industrialized democracies, only Canada and the United States are still trying to flog Taylorism. In fact most successful industrial democracies have dumped that for the kind of consensus-building, worker-involvement, democratic workplace decision-making that goes on in most of the western industrialized societies.

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I could tell you that if the workers at Algoma Steel had been in a stronger position in the 1980s when Algoma was making money, they wouldn't have decided to pay out huge dividends; they might have decided to invest in the most modern technologies. If workers had been in control at Algoma Steel or had more input, we wouldn't have had one supervisor for every four workers, as if workers were dumb. We don't need that.

The way work is organized has very little to do with workers and unions. In fact those concepts have been part of our collective bargaining strategy, to try and manage those. I guess it's not surprising that when you sit down with a management consultant in a set of labour negotiations, the thickest proposal you get from him is the nine pages on management's rights, that you don't have any; that's something we continuously opposed.

With regard to places where we're involved, the approach we take is—and I put it in its starkest two statements—that we believe that the effect of management on workers means that management is too important to leave to managers, so we're injecting ourselves through the collective bargaining process into management decision-making, because bad management makes bad decisions and our members pay the price.

The other point to make is that we say often, and we practise it in our union, that our union is capable of consultation. We have a very skilled and professional staff. We're capable, where it is possible, of cooperation, but when neither one of those is possible, we're also capable of confrontation, and the path we choose is very often determined by the management we work with.

Mr Len Wood (Cochrane North): Very briefly, I want to first of all congratulate you for bringing forth an excellent brief. The concern you felt that there should be unanimous support from all three parties for Bill 40 goes back to where the workforce is drastically changing. I guess we're both well aware of that since the two companies in northern Ontario were formed, Spruce Falls Inc and Algoma Steel Inc, with union-sponsored worker ownership. I'm not sure how well Algoma Steel is working right now, but Spruce Falls is working very good. The first six months has shown a profit, an increase in productivity, and they're well pleased.

I'm just wondering what reaction you have that Bill 150 was not voted unanimously. The Progressive Conservative Party voted against that at the end of July, although both those companies seemed to be working really well.

Mr Gerard: I guess I view the current piece of legislation we're here to talk about, along with several other pieces of legislation that I understand are before the government or the House, as being parts of a rebuilding of the Ontario economy. The tremendous difficulty I have with what's going on in this province is that the hysterical attack by the business community, supported by the opposition parties or vice versa, is really undermining the labour relations climate as well as the investment climate in Ontario.

There are many corporations that the United Steelworkers have a very constructive relationship with. I find it offensive to meet with them on Monday and for them to be the same companies that want to talk to us about helping them save their bacon after they've messed up, while on Tuesday they are, with the help of the opposition, out saying that basically unions shouldn't exist, having a tremendous attack on this legislation, supported by an attack on the labour movement.

I read in a recent Hansard that one of the Liberal members—who was probably still very upset that his father didn't become a senator—made very, very personal attacks on me and some of my colleagues. That does nothing to the debate on what kind of economy we want to have in Ontario.

All the comparative law analyses done by rational economists will lead you to know that unless we adopt a more participatory approach to rebuilding the economy, the economy won't be rebuilt, and that can only be done

through trade unions and collective bargaining. That is the only vehicle that is proven in western industrialized democracies to work.

Mr Offer: Mr Gerard, thank you for your presentation. I too am looking forward to an in-depth analysis of the provisions which will follow shortly.

As an opening comment, I note in your first few words you hope that there were a number of other representatives who would have the opportunity to come before the committee. Certainly, I agree with you. I think you should be aware it was just last night that I presented a motion before this committee to request extended hearings for this committee because there is something in the area of 1,100 people who have requested an opportunity to be heard on what you have characterized as a bill of importance, which has garnered a great deal of attention.

Unfortunately, I have to inform you that the motion was defeated because the New Democratic members of this committee unanimously voted against it. We lost the vote six to five, so I have some concerns that as important as those individuals are, to come before the committee, they will probably not be able to because of that motion having failed yesterday evening.

I appreciate that you came before and you spoke—and I mean this in no critical terms—in generalities, in principle, because I think that's important.

Mr Gerard: I know that there'll be at least another dozen Steelworkers who become very specific.

Mr Offer: I think it's important that we talk about some of the principles of the legislation. You mentioned on more than one occasion you were dismayed by the attack on Bill 40, that you viewed the criticism of the bill by opponents as not just a criticism of the bill but really of the labour movement as a whole. I believe that's a fair restatement of what you indicated earlier.

I think you should be aware that though it just be our third day, we have heard of concerns through submissions by, for instance, the Ontario Association of Children's Aid Societies. I have heard concerns by school boards across the province, by hydro utilities, concerns about the bill from these groups and, of course, just yesterday by independent grocers who were concerned about how these provisions might affect the way in which they would be able to distribute food, being the sole source, distributor of food in many communities in the province.

I'm wondering if you categorize those individuals bringing those concerns as being against the labour movement, if they fall within the same broad-brush strokes with which you have painted all opponents to provisions of the bill.

Mr Gerard: What raised the concern they put before you? What's the concern they gave you? Are they just opposed to the whole bill?

Mr Offer: No, Mr Gerard. I'd be more than pleased to provide those presentations to you, but the children's aid societies association was very concerned about what the provisions and the replacement worker provision would mean in being able to provide service to their client children. So the question I have is not on the specifics of the concern. Believe me, they have come before; it's part of the

public record. My question to you is, do you put all of those individuals in that same category of broad-brush opposition to labour in the province?

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Mr Gerard: The broad-brush opposition I have certainly puts all of them in the same category if they're coming with the same concerns. If they're bothered by the anti-scab provision—I'll call it what I think it is—then that's a concern that I view as putting them all in the same boat.

The fact is that there is currently one jurisdiction in Canada that has that provision. They also have children's aid societies, they also have grocery stores, and their societies seem to be doing quite well, thank you very much.

I would say to you that the jury is out on what will happen even in the US. I can say to you that a senior officer of our union is now a senior adviser to the Clinton campaign, and I expect that if Clinton wins, this will be on the agenda in the US.

Outside of that, let me ask you, Mr Offer, do you know any other western industrial democracy where scabs are an issue? They're not an issue in any of the western European democracies. They're not an issue in Japan. In fact when workers go on strike, everybody stops work and the collective bargaining process brings about a resolution. If that's their issue for opposition, I put them all in the same boat, yes, sir.

The Chair: Mr McGuinty, and please leave Mr Gerard enough time to answer.

Mr McGuinty: Just to pursue that a little bit then, Mr Gerard, have you heard of any legitimate criticism advanced against Bill 40 to date? I know you've paid a lot of attention to this, because you're very concerned about it. Has anyone, anywhere, at any time, advanced any criticism against this bill which you would deem to be legitimate?

Mr Gerard: With regard to the current legislation before this committee, the answer would be no. The reason I would put that to you is that I said to you earlier that I support this piece of legislation for the reasons of rebuilding an industrial economy, but I also think the legislation falls far, far short of what should be before this committee.

Interjection.

Mr Gerard: Let me finish my answer. The other part of that quite frankly is that I don't know of one proposal in Bill 40 that isn't in place either somewhere in Canada or in some other western industrial democracy that is doing a lot better economically than Canada and/or Ontario.

Mr McGuinty: I just want to touch on the matter of the replacement workers. There are two arguments put forward for the provisions that are contained within Bill 40: First, it will eliminate picket line violence and, second, it is inherently unfair for an employer to use replacement workers if his workers are unionized. I just want to address the first aspect, elimination of picket line violence, and how real a concern that is, because based on the ministry statistics that were given to us, these—

The Chair: Mr Carr, how much of your time can Mr McGuinty have?

Mr Carr: None. Well, I'll give him a little bit. Just kidding.

Mr McGuinty: I owe you one, Gary.

Mr Gerard: You're on the same side on this issue anyway, so go ahead.

Mr McGuinty: No, not entirely.

There is a law in place right now, and any activities that we are concerned with are criminal activities. We're concerned about assaults. We're concerned about intimidation. We're concerned about violence. All of that is governed by our criminal law, and if there are criminal activities occurring on the picket line, then those laws should be properly enforced. I'm not talking, remember, about the second aspect of the replacement workers. How do you respond to that?

Mr Gerard: It's an interesting question. Possibly this may not be the best public posture, but let me make two points. Picket line activity certainly shouldn't be governed by the Criminal Code. I don't necessarily view all acts of civil disobedience, if that's what you want to characterize them as, as being illegitimate. They may be illegal, because even if we were in South Africa, things that are illegal aren't necessarily illegitimate.

The fact is that I view the right to strike as the most fundamental democratic right in a society. If you give me that right to strike, it means to me I have the right to withdraw my labour, and if what you return to me as a right to withdraw my labour is the right to take my job, then I suggest to you that I'm going to get very angry. That's what provokes picket line incidents.

If you came home from work tonight and someone was walking out of your front door with your TV set and you smacked him in the mouth, you'd probably get off because he was stealing your TV set. But if I have an accident on a picket line or if there is someone going in to take my job and we get in a confrontation, I end up in jail. Yet that person is taking my job, taking my livelihood. It's a very emotional issue for workers who have already chosen to give up their income.

Mr Carr: Thank you for the presentation. My time will be short, so I'll make it quick. You talk about democracy, you talk about rights. If you truly believe that, why are you afraid of a secret ballot for certification?

Mr Gerard: Two very quick points, because I guess we're short of time: First of all, that's a very narrow view of democracy. Democracy, the kind I'm talking about, has a lot more to do with ongoing worker involvement and worker participation on a daily basis than the simple concept of casting the vote, as you put it. It's a much more broad concept of workplace democracy.

I also think many of you are fooling yourselves by continuing to harp on this business that somehow a secret ballot vote in the certification of a union is democracy. The fact is, it isn't. It's been proved time and time again that when workers make the choice to sign a card, to put their name on a card that says, "I want to belong to a union," that is probably the best expression of their free will. For those who continue to harp on that issue is really, I think, an insult to the intelligence of workers.

Interjection.

Mr Gerard: Let me finish. I certainly wasn't finished yet; I might have taken a breath. The fact is that their decision to sign a card is the best expression of their will.

The other thing that happens in the only other society where a vote is the ongoing issue is that the employer ability to intimidate and to delay the process is enhanced. The society that is most committed to the vote is the US. I have some knowledge of that because of the structure of our union. The average certification in the US takes in excess of two and a half years. Don't try to tell me that's an expression of democracy, Mr Carr.

Mr Carr: What I'm saying to you is, you talk about democracy, you talk about rights. The fact of the matter is, there can be intimidation from the union side. I submit to you that one of the reasons the unions don't want that is there are some union organizers who will intimate people.

If you truly believed that your process was right and people wanted to unionize, then you would agree with a secret ballot, no intimidation by business and no intimidation by a union. You come in here and talk about rights and democracy and then you don't believe they should have a secret ballot vote. How can you say that?

Mr Gerard: Let me just suggest to you—

Mr Carr: It's ridiculous.

Mr Gerard: It's ridiculous because of your limited experience in labour relations.

Mr Carr: I was a Teamster; I know what it's like. I was a union member; I know what it was like. Don't tell me I don't know what's going on; I know.

Mr Gerard: Then you really do have limited experience in labour relations.

Mr Carr: Good. Now you're fighting with your other union buddies. Great. You talk about rights, you talk about democracy, yet you won't give the people the right to have a secret ballot on it.

Mr Gerard: Let me just try to minimize your hysteria, which is rising again. The fact of the matter is that there is so much evidence that will clearly demonstrate that the access to a vote as a mechanism for certifying workers does not work. The only industrial democracy that resorts to that is the United States.

The fact is that in that process workers have a higher incidence of discharge in organizing, there is a lower degree of success than anywhere else in the world, the length of time it takes for the certification process to run its course is the longest in the industrialized world and the only reason that people like yourself are promoting that concept is that you know the facts.

That is a fundamental desire to erode the ability of workers to join a union. Why don't we talk about West Germany, where if the workers participate in a broad-based collective bargaining process, the employer has the right to opt out.

Mr Carr: The lower degree might be because those are the true wishes of the people.

Mr Gerard: After the employer has the right to opt out, if one worker in that workplace wants that collective

agreement, it has to be applied. Let's talk about the economic success of West Germany versus Canada or Ontario.

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Mr Carr: The fact of the matter is that the reason there may be lower degrees is because the true wishes of the people may be heard through a secret ballot.

Mr Gerard: The greater degree of worker participation in the collective bargaining process, Mr Carr, will be demonstrated by comparative labour law analysis that I provided to you today, which you've been asking for and which will demonstrate that those lead to the most successful industrial economies.

Mr Carr: Let's not talk about the specifics; let's talk about the principle. You're very strong talking about rights and democracy. Do you agree with the principle that the decision to join or not to join a union should be through secret ballot where the true wishes of that individual will be known? Do you agree with that principle?

Mr Gerard: No, and let me tell you why. Again the fact is that in a process where the employer gets to have scrutineers, where the employer, by its additional pressure in the workplace, gets to participate in that, by its very nature that intimidates the process.

Not me, Mr Carr, but industrial relation specialists from around the world, which I've provided you information on, categorically state that that process impedes collective bargaining and impedes the free choice of workers to join trade unions. So don't hide behind that when you know—you know because I'm sure your party has the ability to do the same research that our union does—the only reason you're advocating that concept is because you know it leads to the erosion of the labour movement.

The Chair: Mr Gerard, I want to thank you very much for coming here today on behalf of your membership, the United Steelworkers of America. You've obviously made a valuable contribution. You've provoked a significant response and we appreciate your interest in the process and your eagerness to involve yourself and your workers, those people you are representing here today.

Mr Gerard: Thank you very much. We'll take real steps to make sure our members get heard through the various other forums that will be available.

The Chair: I'm doing my best and I think the members of the committee are doing their best.

Mr Gerard: We'll all try to meet at Mr Offer's office one of these days.

Mr Offer: The door's always open.

The Chair: I'm sorry that we're a little bit behind schedule, but I've wanted to make sure that every caucus has an equal amount of time to engage in the discussions with the participants.

ENERGY AND CHEMICAL WORKERS UNION,
LOCAL 513

The Chair: The next group is the Energy and Chemical Workers Union, Local 513. Please seat yourselves, tell us who you are and what your titles are. I want to remind people that there is coffee and soft drinks here for our

guests and visitors. We want you to feel at home. Try to save the second half at least of your half-hour for discussion which, as you've noticed, can be somewhat lively and informative.

Ms Christine Leonard: Good morning, Mr Chair and members of the committee. My name is Christine Leonard. I'm the president of the Energy and Chemical Workers Union, Local 513. Dave Moffat is our national representative. We're here to express our support for labour law reform which we believe is long overdue and crucial to ensuring more equitable relationships between workers, their unions and their employers.

The Energy and Chemical Workers Union supports the Ontario Federation of Labour's submission on Bill 40. However, we would like to take this time to relate our union's experiences while attempting to organize at Consumers' Gas, my employer.

In 1983 the Energy and Chemical Workers Union, which was already representing approximately 800 full-time employees in the clerical unit and close to 700 workers in the operations section, signed up what we felt was a clear majority of part-time employees who were doing the same type of work as the full-time workers but were exempted by the old act by virtue of their hours of work.

When we got to the Ontario Labour Relations Board, the company produced a list of approximately 30 people, many of whom, I might add, were sons and daughters of management who simply delivered gas bills once a month, and had them classified as part-time employees. Needless to say, we no longer had the 55% that would have entitled us to automatic certification.

We'd like to add that we are pleased to see that the government has eliminated the \$1 membership fee which was required for the purpose of certification under the old act. In 1984, while trying to organize the clerical workers at the Consumers' Gas office in St Catharines, we lost on a technicality which involved the membership fee.

The drive was lost when we got to the board with enough cards signed that would have entitled us to automatic certification, only to discover that one of our organizers had omitted to record receipt of the \$1 fee on approximately 20 cards which were subsequently rejected by the board.

Although we were later allowed a representation vote, we were not successful since too much time had lapsed, and many of the people who had originally signed cards, most of whom, I must add, were women, felt frustrated and intimidated by the whole process.

Our last attempt to organize at Consumers' Gas was in 1989-90 when we again tried to organize the clerical workers in St Catharines. However, the company produced a list of people we didn't even know existed. Once again, they had an unfair advantage since they had access to the information that would have been crucial to our organizing drive.

In closing, I would like to say that examples such as those cited by us are certainly not unique to the ECWU. Too often, workers seeking to join unions are disempowered by management scare tactics. We're therefore calling upon this committee to urge the government to ensure that

the final bill contains provisions that will truly advance equality between employees and employers.

We're urging the government to ensure that Bill 40 requires an employer to forward a list of employees to trade unions upon application for certification. We're also urging the government to revisit subsection 8(2) and lower the act's current provision of 55% for automatic certification to assist those workers who are seeking to exercise their democratic right to organize in order to improve their economic circumstances. Thank you.

Mr Dave Moffat: I'd like to add a concern. I'm pleased to see that the amendments suggest the recognition of successor rights in the situation of contracting out of cafeteria and building maintenance staff. I don't think that change goes far enough. I think it should cover additional service people and construction.

The situation I'm concerned with specifically is where a collective agreement exists representing workers and the employer is able, either through contracting out directly or subcontracting to individuals, to eliminate their opportunity to ever become organized and actually puts those individual jobs out. Although collective bargaining has gone through in good faith, those jobs are able to be auctioned off to the lowest individual bidder.

Quite often, these people are individually and dependent workers on that company. In the situation we're talking about the employer, in this specific case Consumers' Gas, is able to subcontract out jobs that are normally done by union workers, and the subcontracted individual is able to basically auction the services off at the lowest rate, undermining the process of collective bargaining. These individuals do not have a right to collective bargaining. That's an area I would like to see pursued in the current act. On the whole, I am supportive of the provisions currently presented.

Ms Leonard: Once again, we'd just like to thank the committee for allowing us to take this time to express our views on Bill 40.

Mr Offer: Thank you for your presentation. One of the areas you spoke to in organizing was the need for the employer to provide lists. Just before I ask you the question, I certainly accept the right of workers to associate, to join a union of their choice. That's a right that has long been held in this province and, I believe, is a right that is respected.

Up front I'll tell you I have a concern with the provision of lists. I know you've brought it forward as a way in which it's easier to organize. I'll tell you where my concern is.

A list would provide, as far as I'm aware, the names of the employees and their addresses. I have a concern that, firstly, that breaches a right of privacy that those individual workers should enjoy. I have a concern as to what impact that would have on female workers, having their addresses known. I'm wondering if you could help me out on that. We heard the issue brought forward earlier on, and I must say that though I certainly understand and accept the right to organize, I do have some substantial concern about the

provision of lists and what that means in terms of privacy, confidentiality, to those very same workers.

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Ms Leonard: I think that problem you raise, the concerns you raise around privacy and security, can be alleviated if the union seeks authorization from the employees prior to obtaining that list. In most cases, most of those members would have already expressed an interest in joining the union, and therefore what the unions would need to do is to seek their written consent or their verbal consent to have the company release those documents.

With respect to security, I really do not foresee the unions publicizing lists of workers, be they male or female, and using those lists for any purposes other than organizing the members.

Mr Moffat: As far as the right of privacy goes, we're only asking for lists the employer in fact already has. If the employer is to be entrusted with that apparent right of privacy, if you had respect, as you suggested you do, for the right of association and that freedom, you would also have that trust in the people who administer those programs, I would assume. We're not asking for hospitalization lists. We're only asking for lists employers currently have.

Mr McGuinty: I see where you're coming from, but let me just follow up to this extent. If something unfortunate was to happen as a result of disclosure of the list, whatever, who would assume responsibility for that? Would it be the employer who released it or the union officials who obtained it?

Ms Leonard: It's unfortunate that you would want to focus on something negative.

Mr McGuinty: It's our job to explore all these possibilities.

Ms Leonard: In many cases, some unions, through their own methods, obtain lists of employees, and to my knowledge nothing unfortunate has happened. It really depends on what happens and on what side it occurs.

Mr Moffat: I might also ask you to be more specific about what you mean as unfortunate, whether your perception of unfortunate is that someone actually from a union gets someone to sign a card or whether you're talking about them on a stroll in a park and something unfortunate happens. I'm glad you didn't refer to my daughter, because that would have been even more of a fanatical perspective that you're raising.

What if something unfortunately currently happens with an employer who has the list, or a mailing company? I'm very concerned about anything unfortunately happening to anybody.

Mr McGuinty: It's unfortunate that you try to categorize it in that way, because it's not my intention. I'm trying to raise a very legitimate concern. We live in a litigious society. People are suing each other left, right and centre, and I'm just trying to explore possibilities, that's all.

Mr Moffat: Okay. If you want to continue that, the next question I'd have to ask you is to be more specific about what you mean by unfortunate. Not wishing any harm on anyone of any stripe, other than the response

we've already given, there's really nothing else to say unless you were to be specific.

Mr McGuinty: If an employee were approached and the employee felt, for whatever reason, that the style of the approach was something he or she resented, that there was harassment or active pursuit or whatever—it's not difficult to think of these possibilities. I'm not trying to be hysterical. I just want to ensure that if we were to proceed and ensure that you're provided with a list, there be commensurate responsibility assumed by the union for anything that came from that. The employer could say: "Look, I gave the list. It's out of my hands. I was required to give a list. Please don't look to me."

Mr Moffat: As a union-elected official and as a hired agent of a union, I would suggest that we will continue to act responsibly in conducting the business of the union. Speaking for ourselves and other members of the trade union movement who participate in things like organizing campaigns, I suggest they do in fact act responsibly and will continue to do so.

Mr Carr: This bill has been talked about as improving cooperation. As I've been hearing it, that's been the gist. I've been on both sides of the issue from personal experience with a company that was unionized and had terrible relations. It did things that were absolutely terrible, and the other side did, and everything got heightened up. Eventually, the division of the company went out of business and everybody lost their jobs, management and workers.

Could you tell me very specifically what parts of this legislation will improve cooperation? Maybe you could be specific too on some of the things you're doing, on behalf of your members, with companies to work better and co-operate. Could you be specific about how you can see this tying into that? I think everybody—100% of the members of this Legislature—says we have to have better cooperation. This government has said this will do it. I don't believe it does. Could you tell us specifically how you see this working for better cooperation?

Ms Leonard: I think as it stands right now, business has an unfair advantage, and that breeds a lot of frustration on the part of us in the labour movement. Once there are steps taken to ensure that the playing field is somewhat leveller, both parties can feel they're standing on an equal footing. Until that happens, if you're always in a situation where you feel like you're butting your heads against the wall because the deck is stacked in someone else's favour, there will always tend to be confrontation. I think we need to level the playing field and workers and their representatives need to feel more empowered, need to feel they have more of a say in their workplaces. When things like those start to happen, then I think we will see the situation you're talking about occurring.

Mr Carr: The problem with this whole debate has been rhetoric. People talk about levelling the playing field and then they jump all over one side or the other. Specifically, from this bill, what do you see in there that will, to quote you, level the playing field? How will you see this being improved specifically so there will be better cooperation for you and your union?

Mr Moffat: Specifically in our union and the representative group we're referring to here—you'll hear it from other organizations and unions as well—we have a workforce at Consumers' Gas, as the employer, that is approximately 2,400 non-managerial employees. We represent approximately 1,900 of those; therefore, the clear majority in any democracy.

Under the current Labour Relations Act, a certain portion of employees has been exempt. Therefore, we have been spending over the last number of years, through collective bargaining and other efforts, a significant amount of time effecting the security of those 1,900 bargaining unit employees, which is being threatened by the same people who do the same work. Because of the legislation that stands now, they have been exempt, whether they are separated from operational because they're clerical, or whether they're part-time, a further separation, part-timers who have been separated from other clericals.

Even though they work hand in hand and do training of one another and participate in the same workplace, they do so with a great deal of frustration and a threat of their security. This act addresses that, and hopefully in the future those sort of circumstances won't develop.

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Mr Carr: How does that address it? What I want is to be very specific. You talk about all the problems and so on. Specifically, what will this bill allow you to do?

Mr Moffat: One area, based on the subject we're talking about, a group that's newly organized, of a similar nature, that has 100 people who work in an office who are part-time and 700 who work full-time: If 600 people sign cards, there'd be a recognition of the majority. In the old legislation, if 600 people signed cards, there were possibly 100 people who would be exempt, who would be non-bargaining unit people and would continue to be a threat in the collective bargaining process.

If you've been on both sides—you've suggested the experience—in bargaining both sides use whatever levers they can to achieve their aims or goals, and in bargaining the 100 people who remain unorganized, who are usually the part-timers who are exempted, become a bargaining lever against the full-time, even though they are expected to work responsibly, hand in hand on a day-to-day basis.

This legislation will address that in a newly organized group. When there's a majority that does the same work in the same workplace, whether they're women or part-timers, whether it was systemic or a natural separation, it'll be addressed with these amendments to the legislation and that environment won't be created in the future.

Mr Carr: What you seem to be saying is that the only way there can be better cooperation is if those other employees are unionized. I don't want to put words in your mouth, but that's what I seem to be getting.

Mr Moffat: Well, you were putting words in my mouth. What I'm suggesting is that if there was a basic recognition, like people say there is, that workers have a right to organize and there are not barriers in legislation to that organization, then we'd be able to get off that subject. We'd stop talking about union security or whether there's a

need for unions and we would face the reality that organization in workplaces will continue. It has been in existence for quite a long time. The productive side of the industrial world has recognized the requirement and need for unions and continued need for unions and organizations in the workplace, and it does not put up impediments, for example, the exemption of part-timers from full-time bargaining units, under the guise that they have a different community of interests.

Mr Carr: I may be missing it, but do you see the problem is that for as long as the debate has gone on, we keep hearing this rhetoric? I don't mean to be confrontational, but three times I've asked you specifically, and maybe I'm—

Mr Moffat: I was very specific in my answer. I talked about the section of the act that will no longer separate bargaining units from part-time and full-time—I understand you didn't hear me the three times, so I'll say it again—that specific section, and that's what we came here to talk about in respect to the circumstance here.

We have 800 people in one office who have actually signed membership cards. We have 150 people who are exempt from that bargaining unit. Even though the clear majority are members of the bargaining unit, there are 150 people who threaten their bargaining security. The recognition that there is a right to bargaining security is there. Everybody says that. That's the rhetoric you maybe were referring to. The constant threat of the 150 who are exempt by the current legislation will no longer be exempt by future legislation.

As a matter of fact, most of these jobs are probably in the service area. If you have access to studies, they're probably predominantly women, and until this act is enacted, the labour relations board will separate full-time bargaining units from part-time bargaining units, even though the clear majority suggest in a workplace that they want to be organized.

Mr Carr: If I'm following you right, when these 150 become unionized, then there will be better cooperation?

Mr Moffat: If you recognize the security that once you get 800 people to become members you won't put a barrier up for the other 150 to become members, then of course you could get on to dealing with productivity in the workplace, the enhanced working environment, being productive, job security for 100 years instead of 10 years. Yes, we can deal with real issues, instead of trying to survive.

Mr Carr: Let's be specific about Consumers then. What is happening now between those two units, the 150 and the other group? What are some of the instances Consumers is doing to divide you to hurt the cooperation? Be specific. What is happening now because they aren't unionized in order to kill this cooperation?

Mr Moffat: They are certainly a bargaining lever.

Mr Carr: Specifically, how many instances do you have—

Mr Moffat: They have no bargaining rights. They can't negotiate wage increases. They can expand at any moment. A whole floor of unionized full-time people

could be wiped out if their expectations or their opportunity to pursue certain hours of work or a certain system of productivity, or if they were to negotiate with the company that—we have one manager for every three workers. That's stupid. Let's start talking about making a more productive work environment. Those are things we try to pursue in our discussions with the company. We also have the hammer of next year there might be 300 part-time non-unionized people you won't be speaking for as the representatives of the group, even though we clearly have the majority.

Mr Huget: Thank you, Ms Leonard and Mr Moffat, for your presentation. I'd like to touch for a moment on an issue that arises when the system breaks down and when there is an impasse reached and workers are on strike. I would like your views and your experience in terms of the replacement worker issue. I would like to know from both of you what your experience has been with replacement workers, what effect that has had on the immediate situation during strikes and, more importantly, I would like your views on what impact lingers, impact that remains, I feel, long after the strike is settled, due to incidents that arise on picket lines. I would like your views on that issue.

Ms Leonard: I have no experience in the situation you just raised so I would pass the question over to Dave.

Mr Moffat: My experience as a negotiator over the last 10 or so years in dealing with a variety of situations of strikes suggest that there in fact is a long-term negative experience when replacement workers are used. They almost every time have been an impediment to getting a final settlement, on the basis that sometimes the company wants to keep them or keep some of them. They usually get rid of the organized negative group they may have hired as replacement workers, but they want to keep a few, and it has a long-term negative effect in that the replacement workers were able to undermine the recognition of organized workers in their pursuit of better working conditions and benefits.

Again, inevitably, in any situation that gets to a strike, replacement workers are a barrier to settlement. I guess the most recent situation I can think of is the newspaper pictures of the strikebreakers at the post office. You saw the element that was in the newspaper photographs with the motorcycle clubs that were wearing their colours, who organized and pursued jobs as replacement workers. Those are ugly scenes. They have a long-lasting productivity effect.

Eventually, the strike's going to be over. That's always the goal if it does get to that situation. I think most reasonable-thinking people who work in this area of industrial relations or labour relations recognize that in the event of a strike, it is going to be over some day and you have to get on with the work and be a successful operation, and replacement workers take a long time to heal. We still have some who have been replacement workers from strikes from 20 years ago who their coworkers won't speak to.

The Chair: Christine Leonard, president of Local 513, and Dave Moffat, the committee thanks both of you, and of course the membership of Energy and Chemical Workers Union, Local 513, for your participation in this process. You've made an important contribution. We trust

that you'll be keeping in touch as the bill progresses through the committee and then back into the Legislature and we encourage you to maintain contact with members of the committee or other members of the Legislature.

Of course you're welcome to stay, and you and others are entitled to receive transcripts by way of Hansard of your presentation or other presentations. As well, the public is entitled and encouraged to attend these hearings as they sit in Toronto and elsewhere in the province. Thank you kindly.

I want to correct what I said earlier this morning when I indicated the committee would be back here on Monday. We will be back here on Monday, but we're starting at 1:30 on Monday, rather than at 10. Far be it for me to know why we'd start at 1:30 rather than 10, but we are. That was the decision of the subcommittee and the House leaders.

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HAMILTON AND DISTRICT LABOUR COUNCIL

The Chair: The next participants are the Hamilton and District Labour Council. Welcome. Please tell us who you are and your titles, and tell us what you will. Try to leave 15 minutes for dialogue.

Mr Bob Sutton: I am Bob Sutton and I'm an executive member of the Hamilton and District Labour Council.

Ms Maureen McCarthy: Maureen McCarthy, vice-president, Hamilton and District Labour Council.

Mr Sutton: I want to start by telling you a little bit about what the labour council is. It's the central body of labour in Hamilton. We have around 130 affiliated unions and we represent about 30,000 working people in Hamilton plus many more retired members.

We're very pleased to be here and have the opportunity and we're extremely pleased that the provincial government would come forward with this package of labour reform. We are disappointed that some of the issues raised in the discussion paper failed to make it to Bill 40—some of those things that failed in the consultation process I think were very important to us—but all in all I think Bill 40 is a very important bill.

We're going to address just a couple of things in our brief. One is the right to organize, which is very important to our members. We've had a lot of problems in the Hamilton area with that. The other is the prohibition of replacement workers, the anti-scab legislation.

I'll take a little piece here. In 1939 J. S. Woodsworth, the leader of the Co-operative Commonwealth Federation, brought a bill into Parliament to amend the Criminal Code of Canada. This was section 392 and it was adopted by Parliament, making it a criminal offence to discharge an employee wrongfully and without lawful authority for the sole reason that he or she was a member of a trade union. Basically what we're saying there is that, between the Charter of the United Nations and the Ontario Labour Relations Act, people should have a right to belong to a union if they desire. The way we see it, this right in Ontario is too often denied.

Under the present legislation, there are too many workers who are under fear and intimidated when trying to exercise their rights to join a union. Too many employees have

been unjustly discharged just for signing a union card. Even though this is technically illegal, it still happens.

The extension of the right to organize to include agricultural workers, domestic workers, horticultural workers and professionals is a very positive and progressive step. The thing we're a little bit concerned about is one particular one, that supervisors were excluded. If supervisors had the opportunity and decided to join a union, they could be their own bargaining unit. They would have the same protections as the other workers in the plant and being their own separate bargaining unit they're not in a position of any conflict.

I've got a quote here from a gentleman named Art Frewin. He's chairperson of the salaried action committee. This is a group of Stelco salaried employees who were terminated just a little over a year ago. They had been handing out leaflets at Stelco's gates, at the Stelco board meetings. Here's a little quote from Art, "We're not after anything more than the bargaining unit employees already enjoy." I think the bottom line here is that if these Stelco salaried employees had an opportunity to join a union, they'd be there with their pens right out.

The other important improvement is allowing security guards to join the union of their choice. I just can't see any reason why it was ever any other way. Again, just like the supervisors, if they join a union, the Steelworkers or the United Food and Commercial Workers International Union, they would still be their own separate bargaining unit, they'd still have their own duties. They are completely isolated from our bargaining unit and it wouldn't make any difference.

The other thing I wanted to get into here was about protection of workers for signing union cards during organizing campaigns, access to the company's property, access to third party property and company lists, how important these are to an organizing drive and how they can be used to defeat an organizing drive.

I'm going to give you an example in St Catharines. This is a company which was a novelty company in St Catharines and the Steelworkers tried to organize it almost a year ago. What happened is that they started off by getting one of the workers inside the plant. He was very enthusiastic; he was very well liked by his fellow workers and he was the key organizer. He was the guy who was in there getting cards signed and talking to his fellow employees.

Well, he got discharged. There were no reasons. Of course, the union immediately went to the labour board and they called a settlements officer in. He met with the company and the company decided that they would hire this guy back and pay him all the lost time. It didn't cost this guy a cent. However, they wouldn't admit that they'd discharged him for organizing a drive, or any guilt. They just said: "Look, we made a mistake and we're offering the guy's job back. Either he takes it or he doesn't and we'll fight it from there." Of course the worker's going to take his job back.

But during the weeks he was off work from the day he was fired, the organizing drive came to an abrupt halt. Who's going to sign a union card when the guy next to

him is being fired? The other side of the coin is that when this guy comes back, he's still talking about the union. However, when it comes to his getting cards signed in the plant, he's lost the enthusiasm. The union looks around and one of the other members who had already signed a card said, "I'll pick up the ball." He's in the plant getting cards signed; he gets suspended. Now all of sudden the drive's at a dead halt again.

What happens now is he gets a similar offer, they bring him back. Now he's out there getting cards signed again and the union's got another problem: This is a fair-sized plant. How many workers are here? We've got X number of cards signed. Have we got 55%? Have we got 60%? Have we got 40%? So they asked the guy, "Go in and count the number of cards at the punch clock." He goes in and counts them and it was less than 150 cards. So the union feels: "We've probably got more than enough cards signed. Let's apply for a vote." This is what they do, because they're still unsure as far as the number of cards is concerned. They're having trouble contacting a lot of employees so they go this route.

They meet with the settlements officer and the company and the company comes out with a list of over 210. I think 212 employees was the number I was told. They had 150 punch cards. Now what's going on here? They start looking down the list and there are part-time workers in there who, under that legislation, are excluded. There are a lot of people that the company says, "These people aren't supervisors." But these same people have also said they have the right to discipline other workers. So they challenged every one of these names. They spent about eight hours arguing about the people on the list, but the union still feels: "We're not sure where we are; let's withdraw our application. We'll go back and get some more cards signed now that we've got a better idea of the number of employees in the plant and we'll apply again," which is what happened.

When it comes time for the vote, people are going into the lunchroom to vote. There are management people standing at the door of the lunchroom speaking to them as they go in. The union complains to the labour board people. These guys are removed three times from the doorway of the voting room. Anyway, they narrowly lost the vote. The second chap who had been given the two weeks' suspension hadn't come back. He decided: "This is it. I've had enough." This is the sort of thing you have to deal with.

In a case like this, if the first worker had been given the protection he needed, he wouldn't have backed off, he wouldn't have gone and sat down. He'd probably have been returned to work within 48 hours of what we would hope for. The big problem here is the delays. People are sitting there in a plant and they may have lots of reasons why they want to join a union or maybe don't.

The bottom line is that as this stretches along—and this organizing drive took between six and seven months by the time it was completed—first of all they see the guy discharged. A lot of them lose enthusiasm. All of a sudden he's quiet again because he's nervous; he can't afford to lose his job. Other people see it as: "Jeez, what's the use of having a union? Look how ineffective they are. It's gone

six months and they still haven't been able to organize. What are they going to do for a collective agreement if it takes them six months to do this?" A lot of the enthusiasm's lost and the biggest tactic that a company has, if it wants to defeat a union, is to delay things as much as possible.

If the union had better access or was allowed complete access to company property, instead of having a worker in there who could be discharged they could have had a union rep sitting in the lunchroom taking to people as they came in and out. He could have been asking questions. He could have been having cards signed.

Access to the company's list: Here's a perfect example of how they didn't even know how many people worked in the plant. It was information that wasn't available to them. The company claimed that as perks, it gave some of the other employees the right not to punch in and out. There's no reason for it. It seems strange that one person would be able to punch in and the other person wouldn't.

They didn't use a petition here, but a petition is exactly the same thing. A petition's just another delay tactic; it ties up the process, extends it. People question, "What good is a union if it takes months?" It's exactly what it is. Anything that the company, if it doesn't want a union there, can do to delay the process kills it. There are lots of petitions taken around by employees, not because they change their mind, not because they don't want the union, but because somebody in management suggested it and they feel too intimidated and concerned for their job not to. I think that the government, with this legislation limiting the use of petitions, is definitely on the right track, but what's needed is to go that one step further and eliminate them altogether.

1150

I'd like to take the opportunity here to quote Don Ross. He's a city alderman and chairperson of the Hamilton Economic Development and Planning Committee. He gave a brief that he presented to the Honourable Bob Mackenzie on January 20 in Hamilton. Here's what Mr Ross had to say:

"On January 9, commencing at 7 pm, the committee received approximately 13 presentations at the second public meeting. The majority of those presenting were representatives of labour organizations that are very active within this region. In addition, there were three other noteworthy presentations, two from retired workers and one from a representative of a local anti-poverty organization."

Here's what he had to say: "The committee was genuinely impressed with the research and content of all presentations. Each of the representatives from the labour organizations concentrated on specific reforms and cited actual examples within this community that illustrates why this legislation must proceed.

"As chairman of the economic development and planning committee, I have the opportunity to see, both statistically and through business visitations, the change that has occurred within the region's economy. The transition from exclusively a manufacturing-based economy 10 to 15 years ago to a regional economy that now has a significant retail/service sector component has been dramatic. In the 1980s the region has witnessed the creation of more part-

time employment and seen greater numbers of women entering the workforce. The regional municipality obviously acknowledges the need of these individuals to achieve a better working environment and a higher standard of living. There is absolutely no doubt that this region has significantly benefited from having a population that has a high per capita income, which is partly attributable to the level of unionization in our labour force."

I'd like to comment that he's recognizing the shift from manufacturing in Hamilton to the retail/service sector and the big increase in part-time and women workers. I have to say that it is very important that this provincial government changes the OLRA to reflect these changes.

The other thing I'd like to talk about here is replacement workers. Picket line violence should be a thing of the past. It's caused by frustrated workers who have reached their limit of stress. It's also caused by replacement workers who are antagonizing workers on strike, and it's often caused by management people trying to provoke incidents of violence on the picket line in order to obtain an injunction against picketing.

I think other presenters have probably talked about the Quebec legislation. We think it was a good start. I'll give you a quote here from Carla Lipsig. She's a professor at York University and was a labour relations expert who was consulted at the start of the Quebec legislation. She says, "It civilized the labour conflict over a long period of time."

That's what we think the anti-scab legislation's going to do. Instead of employers trying to set up and break a union, they're going to be more apt to try and resolve the conflict and reach a collective agreement before a strike. It's an incentive to reach a collective agreement; it's not to prolong a strike and it's not to shift the balance of power.

To give you another quote, in September 1991 during the postal workers' strike and seeing the problems under federal legislation, Ghislain Dufour, who was a prominent Quebec business leader, told the *Globe and Mail* that it was a good thing that Quebec had these kind of labour laws, referring to the anti-scab legislation.

To once again quote Don Ross:

"The issue of replacement workers and its resulting violence is one that hits extremely close to home in greater Hamilton. I do not have a detailed report available of the actual costs to the region of policing labour disputes over the years but they are significant, and this is supported by the fact that the regional police department has a staff sergeant dedicated full-time for labour relations incidents. The social effects of violent labour disputes, the cost to taxpayers and the corresponding image associated with the region are definitely problems that must be eliminated in Hamilton-Wentworth, and if the reform of the act can accomplish this goal, it will receive the unconditional endorsement of the economic development and planning committee."

The only concern we have is the anti-scab amendment in Bill 40. In our opinion, it isn't quite as complete as it should be. There are some loopholes in the legislation and I think some of the benefits it may have in civilizing labour conflict may never materialize because of them. Permitting employers to shift work to another unit or

geographic location or to contract work out to another location or allowing non-bargaining unit employees who normally work at the struck plant to do the work I think is something that should have been plugged at the same time.

On behalf of the labour council, I'd like to urge the government to seriously consider including these restrictions on the use of replacement workers in the legislation.

In closing, we'd like to say that the labour council is pleased about the amendments in Bill 40 which we hope over a period of time will bring a more harmonious relationship between employer and workers and that this harmony will create the kind of atmosphere that will allow workers and management to work together and to be able to compete in the global economy of the 1990s.

The Chair: Thank you, sir.

Mr Allan K. McLean (Simcoe East): Is the access to company and third-party property which you refer to in your brief where you indicate that a union representative could come into an industrial property in order to organize?

Mr Sutton: What I'm referring to when I say third-party property is access to a store in a shopping mall or access to one manufacturing operation in an industrial park.

Mr McLean: To answer my question, what part of the legislation refers to, if you're aware of it, where a union organizer could come in from outside and organize within that plant?

Mr Sutton: Would you say that again? I couldn't understand you.

Mr McLean: Are you referring, when you talk about the third party, to a union organizer who could come into a plant and head up an organization to organize that plant as a union?

Mr Sutton: For instance, if it was a dress shop in a mall, if I'm talking about the third-party part of it, I'd like to see the union organizer be able to have complete access to that mall, stand in front of the store or at the back door of the store and hand out leaflets or talk to employees as they're coming in and going out. What I would like, though, is to see them have complete access to the premises of the factory or the store as well. But third party would mean what I just said there.

Mr McLean: Many years ago I was involved with the United Food and Commercial Workers International Union in organizing. The discussion that took place this morning was very strongly opposed to the democratic right of people having a secret ballot. If that had been in effect at that time, that company would have been organized because many people would not sign a union card because of the fear of what you've outlined in your brief, of reprimand from company management. If there were a secret ballot and you didn't have to sign a card, wouldn't that be more feasible?

Mr Sutton: No, I have to disagree with you because what happens here, even under the present legislation, is that if you don't have enough cards signed, you can still apply for a vote. So in the case you're talking about, they could still have had their secret ballot vote. I think you're trying to put something there that isn't.

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Mr Paul Klopp (Huron): Thank you for your brief this morning. The main thrust of this bill is to update the regulations to allow people more choice to, as you pointed out in your brief, reflect the changing workplace. Could you expand for me what this changing workplace is and give examples?

Ms McCarthy: I'm with the United Food and Commercial Workers and I worked 13 years at A&P in the retail sector. In many communities, not just Hamilton, but right across the province, we're seeing a huge increase in employment in the service sector. These are traditionally very low-paying jobs, usually held by women and quite often they do not hire full-time; they hire part-time. I think with the unemployment that people have suffered, especially in the Hamilton-Wentworth area, what we're seeing is that many people can no longer find full-time jobs and many of our workers are working several part-time jobs in order to make ends meet.

The workers we represent who are part-time workers are making a decent wage. They also have benefits packages that protect them in eyewear, dental, medical and they also have a retirement plan. That's something most retail workers, say, in the run of the mill shopping mall would never even dream of having. I think this workforce has got to be organized to protect those people because retail workers are no longer the workforce that is only working to supplement the family income.

It's a mistake to believe that the women who are in there working in the store are doing it to have a nice family vacation or buy a swimming pool. Those women are working out of economic necessity. Many of them are the sole support of their families.

This is a trend we've seen throughout the province in the workforce and it's not only women who are affected. There are many men who have been displaced from industrial-type jobs who are moving into the service sector and they're finding the same thing, that they have to work at a couple of jobs in order to make up one full-time job.

Mr Ward: Bob and Maureen, I'd like to thank you for your brief and the specific cases you referred to and the problems you have experienced in representing the working people of Hamilton. I'm sure it's eye-opening to some members of this committee, and I hope the critics of our proposed legislation will be reading Hansard so they can become aware of the problems that are occurring in the workplace in Ontario.

Brantford is very close to Hamilton. I know in Brantford, under the very capable leadership of Garry MacDonald, the president of our labour council, they're very involved in the community, sitting on a number of committees, working with business for the betterment of our community and working people as a whole in Brantford.

Critics of this legislation seem to imply that we cannot have cooperation between labour, business and government, that in fact these amendments will drive a wedge between our efforts to have greater cooperation and trust. As a government, we're trying to head the province down

the road of this cooperation. We feel it's important if we're going to achieve our goals as a province.

Can you give some specific examples in Hamilton of where the labour council is involved in the community and working with business, if possible, so the critics of this legislation can be aware that there are examples of cooperation and that in fact it isn't an adversarial system that we have in existence, that there are examples of cooperation?

Ms McCarthy: If I could just start, there are a couple of areas in Hamilton, and I'll ask Bob to elaborate on it. One is that we have seven labour positions on the United Way of Hamilton-Wentworth and the greatest number of contributions to the United Way in the community is through the donations of workers on payroll deduction. This is largely through the commitment of the labour council and the union delegates to that council to the United Way.

The other example I would offer is that since I would say three or four months ago, the labour council began having periodic meetings with the chamber of commerce in Hamilton to discuss issues of mutual interest such as, how can we make Hamilton an attractive city to business people so that our people can find jobs and the chamber of commerce can attract business to the community? There has been an ongoing discussion with the chamber on that.

The other example I would offer is that the Hamilton and District Labour Council many years ago opened the Worker Education Centre. They provide English-as-a-second-language and job loss and plant closure assistance within unionized workplaces in Hamilton.

Most often the way this is offered, especially English as a second language, is through negotiations with a company and the Worker Education Centre, whereby the centre goes in and actually offers the programs on the company's premises. The company will offer some time at work to complete these and then the worker will give up some of his free time. It's been a very successful relationship in the community. Bob has a few other examples.

Mr Sutton: I'm just going to elaborate on what Maureen said about the United Way. I've been on the United Way board for about four or five years now. One of the first things that surprised me was the amount of interest among the business people on that board in what labour has to say, as well as the fact that there's going to be an organizing drive for the United Way, like a fund-raising drive in a unionized plant, the first thing they do is come to the representatives of the union, and ask, "Will you go into the plant first and talk to the workers?" Experience has shown that when the union's there promoting the United Way with the company, it's much more successful. As Maureen said, the majority of the donations, the majority of the money that's raised by the United Way in Hamilton, is from unionized plants.

Mr John C. Cleary (Cornwall): I'd like to thank you for your presentation. I know the area that I come from has a district labour council too and it shares many of the things you mentioned earlier.

I'd like to thank you for sharing some of your views in your brief. There are just a couple of concerns I might

have. You say in your brief that you're pleased that you'll be able to organize the agricultural and horticultural workers. Since the government seems to be very confused on how to do that and how that would show up in Bill 40, maybe you could share some of your views on how to do that, on account of the seasonal work and the short seasons. I'd like you to mostly just stick to the producers in agriculture.

Ms McCarthy: Just briefly, the United Food and Commercial Workers has many plants that are seasonal. The workers in there are quite often laid off for very long periods of time and quite often they have extremely long workweeks, when they are at work. That has not been a problem in negotiating a collective agreement, if that's what you're getting at.

Mr Cleary: I was more leaning towards the producer, right out on the farm itself, how that would affect the farmer. You must have had some ideas when you put that in your bill.

Ms McCarthy: I don't see where it's all that different from any other employment situation. If the workers are organized or whether they're unorganized, the farmer is still their employer and if they want to collectively get together to bargain for rights as workers, it's not any different from any other workplace. The situation may be different within the workplace and those situations can be accommodated, but they are still workers and they should have the right extended to them to bargain collectively for the things they feel they're entitled to as workers.

Mr Cleary: I thank you for your views, but I see it a little bit differently in the agricultural community. I just thought you might have some input that would help them when they were drafting the part of the legislation to do with agriculture.

Mr Sutton: Could I just speak on something there? One of the concerns I have is that I don't know why people would want to treat agricultural workers any differently than any other workers in the province. One of the things a union's not going to do is negotiate a company right out of business and you're not going to negotiate a farmer out of business either. You're going to accommodate what it has to do to make it a viable operation.

One of the big concerns I have is the frequency of accidents on farms. I think it would be very beneficial as far as health and safety is concerned if not only the workers, but the farm owners and their families were to have some union involvement in health and safety, because it certainly is lacking in the farming industry. I think unions can provide that. We've done well with health and safety in industry. I think we could definitely make the farming industry a much safer place to work.

The Chair: Thank you, both of you, Bob Sutton and Maureen McCarthy, who came here today on behalf of the Hamilton and District Labour Council. You speak for a significant constituency. We appreciate the time you and your membership have taken to prepare this submission and the interest you've shown by being here today. We trust that you'll keep in touch.

Ms McCarthy: Thanks, Peter.

The Chair: We will be back at 1:30 this afternoon with the Ontario Nurses' Association. People are invited to come here to Queen's Park, room 151, to watch it in person. Otherwise, watch it on the legislative broadcast channel, which is doing an excellent job.

The committee recessed at 1212.

AFTERNOON SITTING

The committee resumed at 1331.

ONTARIO NURSES' ASSOCIATION

The Chair: The Ontario Nurses' Association is the first participant. These are public hearings at Queen's Park and the public is encouraged to attend in person or otherwise to watch it on the legislative broadcast channel.

Please tell us who you are and what your titles are. We've got half an hour. Please try to save the second half of that half-hour for discussions and exchanges—at least the last 15 minutes. Go ahead.

Ms Mary Jane Christianson: Good afternoon. My name is Mary Jane Christianson. I am the president of the Ontario Nurses' Association. With me is Noelle Andrews, the acting director of government relations, and Dan Anderson, director of labour relations.

The Ontario Nurses' Association is the largest independent trade union in Canada, representing over 55,000 registered and graduate nurses, 98% of whom are female.

The union has extensive experience with virtually all aspects of the labour laws of Ontario, both in the public and private sectors. ONA received its trade union status from the Ontario Labour Relations Board in 1973. Since then we have organized well over 500 bargaining units of nurses employed in hospitals, nursing homes, homes for the aged, community health, Victorian Order of Nurses and private industry.

The union has long contended that major reform of the Labour Relations Act was necessary. In fact, the submission enclosed was first developed in 1986 for presentation to the then Labour minister, William Wrye. These same materials were the topic of a discussion in a meeting held on April 18, 1988, with former Labour minister, Gregory Sorbara. These submissions were subsequently mailed to current Labour minister Mackenzie on March 19, 1991, and were again presented to him on February 5, 1992, as part of the extensive consultation process the government has granted on labour law reform.

We welcome this opportunity to once again present our views on the amendments set forth in Bill 40, especially those that relate to the Labour Relations Act.

It is not our intention to be critical of the amendments proposed in Bill 40, other than to suggest that the reform is long overdue and to urge this government to move as quickly as possible to enact these changes without further delay.

We see little value in going through the specifics of all the proposed amendments to the act. We would simply like to point out that we see positives to each and every section, the merits of which have been discussed in great detail throughout the consultation process.

Although we were excluded from the discussions leading up to the November 1991 discussion paper, we were disappointed that Bill 40 does not include its full package of proposals. Since we were not a party to the entire consultation process, we draw no conclusions about the reasoning for certain items being omitted from Bill 40.

Rather than be critical, we will accept this as a sign that the government has been and remains open to positive suggestions. We recognize that at this stage of the process any suggestions for wholesale changes would not be viewed favourably. While the union is generally prepared to endorse Bill 40 as a package, we have one major concern that arises from it and accordingly have made one proposal for change.

Before dealing with our proposal, I would like to take the opportunity to view the issue of labour law reform from our union's perspective.

First, the mandate of this union is to represent every working nurse in this province who is eligible for collective bargaining. With a membership of some 55,000 nurses, we represent 90% of the available membership. We have no doubt that the amendments that pertain to the certification process will be helpful in our future organizing efforts but, even with them, organizing remains a challenge.

Over 95% of our members come under the Hospital Labour Disputes Arbitration Act and therefore have no legal right to strike. For them, replacement workers is a non-issue. Where the right to strike exists, strikes have been infrequent and replacement workers would not normally be utilized in any event.

While we view all the proposed changes positively, as a total package we don't see them as a dramatic advance into a new world of labour relations. The day that these changes are proclaimed we will still have to deal with employers who claim they have no money but with whom we must bargain collectively. We will have members on layoff, members with grievances who expect but may not receive timely resolution of their grievances and members who are wondering when, if ever, they will see the pay equity adjustments to which they are entitled. This is our current reality, and nothing in the package of reform changes this. They remain for the union and the employer to resolve through the appropriate mechanisms.

We would now like to address one area of change that this union considers critical to its future growth—that is, the right of the Ontario Nurses' Association to restrict its organizing activities to members of the nursing profession. Bill 40 contains a provision that says, "a bargaining unit consisting solely of employees who are members of the same profession shall be deemed by the board to be a unit of employees appropriate for collective bargaining." This provision, however, appears to have application only to the following male-dominated professions: architecture, dentistry, engineering, land surveying and law. In our respectful submission, the female-dominated profession of nursing deserves to be added to this list of professions that are guaranteed a right akin to craft bargaining unit status.

In the recent past this union has been under attack by employers who have been seeking to include non-nurses within our bargaining units. This is nothing more than an employer tactic designed to defeat our applications for certification, as our membership is currently limited to registered and graduate nurses. In other words, if an employer

can convince the labour board to include non-nurses in our bargaining unit, we have to withdraw our application because we are unable to admit the non-nurses into membership of our union.

In this regard we cite a recent case involving the Belleville General Hospital and the Ontario Nurses' Association. This was an application for certification of a unit of home care nurses with whom the employer was attempting to join a number of social workers. While the matter was only recently settled in ONA's favour, the expense associated with that litigation was considerable, with no assurances that the issue will not be resurrected by other employers.

Quite frankly, we would rather see the available health care dollars going into health care rather than questionable litigation aimed solely at defeating the union. Our proposal would put an end to this type of mischief, which is indirectly funded by the government where we deal with public sector employers. While ONA could amend its constitution to allow for the inclusion of allied personnel into nursing bargaining units, we are not anxious to do so for a number of reasons, not the least of which would be the jurisdictional battles that might occur with unions that have traditionally represented these allied personnel.

By enacting the amendments sought by this union, the government would effectively maintain the status quo as it relates to nursing bargaining units and preclude the significant potential for extensive and expensive litigation in this area. We also see that our amendment would assist our efforts to carve out nurses from all-employee bargaining units. We frequently receive inquiries from nurses who are part of all-employee bargaining units who would prefer to have ONA as their union. We want these nurses to have their own bargaining units and to be able to choose the Ontario Nurses' Association and not be locked into a bargaining relationship which does not meet their needs, for whatever reasons.

We strongly support the inclusion of a purpose clause which purports to ensure that workers can freely exercise the right to organize and be represented by a trade union of their choice. Where nurses are currently a part of an all-employee bargaining unit represented by another union, representation by ONA is a practical impossibility. For example, ONA recently made application for a bargaining unit of nurses in the employ of Shelburne Nursing and Retirement Home in Shelburne, Ontario. The nurses were part of an all-employee bargaining unit represented by the Service Employees International Union, Local 204. The Ontario Labour Relations Board unanimously held that in order to represent the nurses, ONA would have to raid the entire bargaining unit, nurses and non-nurses. While the nurses were unanimous in their desire to be represented by ONA, we had no desire to raid the non-nurses, and we suspect they had no interest in joining us. As a result, we were forced to abandon our organizing efforts on behalf of these nurses, and these nurses were clearly denied representation by the union of their choice.

A legislated right to a purely professional bargaining unit, in combination with the new purpose clause, should allow nurses, such as those employed at the Shelburne

residence and others, to be represented by the union of their choice.

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We thank you once again for the opportunity to express our views on this important piece of legislation. While we recognize that you are not obligated to act on any of our proposals, we strongly urge you to do so for the reasons we have expressed.

As far as the remainder of Bill 40 is concerned, we urge you to move on it as quickly as possible.

Its critics say that the timing is not right for even the remaining amendments, but for them the timing will never be right. These persons simply don't believe in the principles which this government has proposed for inclusion as the purpose clause of the Labour Relations Act. The critics don't really believe that unions and collective bargaining are good things. Fortunately, we know differently.

In spite of unprecedented consultation, the critics will say that there has not been enough consultation and that the amendments are being rushed into law. For them, however, there will never be enough consultation, or the consultation process will be complete only when they have convinced government to withdraw the bulk of its proposals.

We urge this government to resist any further attempt to delay or further water down labour law reform. Please do not let this opportunity to make real change to our labour legislation pass. Thank you once again for considering our proposal.

Ms Sharon Murdock (Sudbury): Just a couple of questions. I'm pleased to hear, because we don't hear it all that often, about how extensive our consultation was. I know that when I sat through the hearings in January and February it seemed like we were listening, and certainly from the resulting legislation, Bill 40, we did hear some of the things.

What I'm hearing you say is that you'd like to be removed from the hospital labour disputes act and included in the professional section of this bill. Is that correct?

Mr Dan Anderson: No. We would not like to be removed from the Hospital Labour Disputes Arbitration Act. What we would like to be is included in the list of professionals who have the right to have strictly professional bargaining units.

Ms Murdock: Okay. Then my second question—actually, I've got two others, but they sort of hinge somewhat on each other. One is, I would like to know how it works with ONA on part-time and full-time work and how you resolve that within your own union, and also then in terms of your views on the consolidation aspects of this bill.

Mr Anderson: I'm not sure I fully understand your question on how full-time and part-time works within ONA, but I'll take a shot at—

Ms Murdock: You cover both, I would presume. I mean, there are part-time nurses within hospitals.

Mr Anderson: We absolutely cover both. In fact, when we go to the labour relations board we traditionally ask for a single bargaining unit including both full- and part-time. Unfortunately, in the majority of cases the employer has asked for split bargaining units. The reason they

ask for split bargaining units is simply in the hope that we may not have the numbers to certify either the full- or part-time bargaining unit.

But in the main, that's not the case. We have full- and part-time collective agreements now, and in those collective agreements we have provisions which basically give full- and part-timers complete portability between the two bargaining units. It would be our preference to have a single bargaining unit, and I would suspect that ONA would make use of the provision which would allow the labour board to merge bargaining units. That is something we would want to do, simply to have one collective agreement covering both our full- and part-time members.

Ms Murdock: And you don't see any conflict in that?

Mr Anderson: No conflict whatsoever.

Ms Murdock: Some of the comments that have been made is that there would be conflict with the part-time workers, whose interests are different from the full-time workers'. I'm wondering, where the work is the same, as it would be in a hospital situation with nurses, how that is working with you. That's what I'm trying to find out.

Mr Anderson: We've had experience going back as far as 1968 with full- and part-time bargaining units. I couldn't give you a shred of evidence of conflict simply because there hasn't been any. The only conflict we've had is conflict with the employer in seeking to make two separate bargaining units effectively work as one by providing the kind of transferability between bargaining units that we think is proper. We think that total transferability is what's proper. For example, if a job vacancy comes up in a hospital, the part-time nurse has an equal right to bid on a full-time vacancy, equal to what a full-time nurse would have, and that flows throughout our collective agreements. But as for problems, there have been none.

It's really only in the last seven or eight years that we've managed to get what I would consider close to complete portability, and I must say it's worked very well. What I would like to see out of it, though, is one collective agreement, so that when the part-timer is wondering what the full-time provisions are, or vice versa, he can simply go to his own collective agreement that shows it, without having to go to a different collective agreement.

Mr Offer: I think I understand the concern you have in your hope that the legislation would—I know it doesn't yet, but could—recognize basically a nursing-only type of association as opposed to others being brought in.

Mr Anderson: To be clear, that's exactly what we have now, but I think nursing deserves to be recognized in the Labour Relations Act as a profession, which it is. We raise it as a concern simply because very recently our bargaining units have come under attack by employers who are trying to put non-nurses into the bargaining units that we're seeking to organize.

Mr Offer: This is the area I want to explore with you in the time available. In light of the Belleville decision, do you expect this type of employer activity will diminish?

Mr Anderson: No.

Mr Offer: Can you share that with us?

Mr Anderson: The Belleville decision really involves a group of home care nurses. I say the Belleville decision was the first of potentially many, because with the shift of health care from the acute care hospitals into the community and the impending split of home care from community health on January 1, 1993, what we're concerned with is that we have existing organized nurses with the Ontario Nurses' Association in home care who are part of community health bargaining units, and who are going to split away from community health on January 1, 1993. There are non-nurse home care case managers. Our concern is that the employers will say they think the appropriate bargaining unit is all home care case managers, be they registered nurses or otherwise.

The problem from our standpoint is that under our current constitution and the current rules by which we live, unless we can take the entire bargaining unit into membership, we can't take any of the bargaining unit. So we're concerned that there may only be, let's say, two, three or four social workers who are employed as home care case managers, but if the labour board were to find that the appropriate bargaining unit consisted of all home care case managers, then there would be, let's say, 50 nurses and four non-nurses. In a situation like that, the labour board would be inclined to say, "ONA, you have successor rights to represent this group," but the ONA would have to say, "No, I'm sorry, we can't because we're unable to represent the four non-nurses."

Mr Offer: I guess that's a very real difficulty because it puts you potentially caught betwixt and between a ruling by the board and your own constitution.

Mr Anderson: Right. Now you can bet we would fight any such ruling to the death. Having said that, that only seems to make the lawyers richer and we're not for that necessarily.

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Mr Offer: My last question is that this issue and this potential difficulty that comes to your profession could be not just alleviated but eliminated if the nursing profession, however it wishes to be characterized, is added in the same way as architecture, dentistry, engineering, land surveying, the lot. If that would happen, your concern would be in many ways a thing of the past.

Mr Anderson: That concern would be eliminated. That's exactly why we proposed it.

Mr McLean: The discussions that took place leading up to November: Why were you left out of them? Did you make an application or presentation? Why were you not part of the discussions? Do you have any idea?

Mr Anderson: We have no clear explanation why that was.

Mr McLean: Did you send in a recommendation of what you would like to have seen, as some recommendations, within the bill?

Mr Anderson: We've been making representations as to what we'd like to see change in the Labour Relations Act since 1986 and have made it to every Minister of Labour

since then. I must say that the most positive response we've had, quite obviously, is from the current government.

Mr McLean: How many part-time nurses and full-time nurses would there be in that Shelburne nursing home? Would there be 60 full-time, 40 part-time?

Mr Anderson: No, the numbers are much less than that. I believe it was seven or eight full-time and seven or eight part-time.

Mr McLean: About 50-50.

Mr Anderson: Yes.

Mr McLean: In an average hospital in Ontario, the city of Barrie—

Mr Anderson: Our membership in ONA generally is 50-50, half full-time, half part-time.

Mr McLean: Would that be the same within a hospital facility?

Mr Anderson: It is the same. Our membership is 89% hospital employees and our membership split generally is 50-50.

Mr McLean: You would really be looking for two recommendations to be included in the bill then; that would be for the full-time professionals and the part-time registered nursing assistants.

Mr Anderson: No. We have no interest in registered nursing assistants.

Mr McLean: Wouldn't they be part of the bargaining unit?

Mr Anderson: No, they're not. They're part of the service employee bargaining units that traditionally CUPE or the Service Employees' International Union represents.

Mr McLean: But in the case of Shelburne, all the staff was involved in that bargaining unit, including the nursing assistants.

Mr Anderson: Yes. There are a few bargaining units where there are all-employee bargaining units that include nurses. They are few and far between, but they do exist and Shelburne was one.

Mr McLean: Would it be mainly in nursing homes and homes for the aged where they would exist?

Mr Anderson: Well, Riverside Hospital is an example of a hospital which is an all-employee bargaining unit that includes nurses.

Mr McLean: So you would then include in the provision of professionals, full-time nurses and part-time nurses?

Mr Anderson: Absolutely.

The Chair: People, I want to thank you on behalf of the committee for coming here this afternoon. You obviously represent a large number of women and men in your profession and you spoke very eloquently for them today. We appreciate your interest and the effort that went into this submission and your participation. We trust you will be monitoring the progress of the bill, and we look forward to hearing from you should new matters arise. Please keep in touch.

CARPENTERS AND ALLIED WORKERS, LOCAL 27

The Chair: The next participant is the Carpenters and Allied Workers, Local 27. Please come forward and have a seat.

You brought to the committee's attention that some people had difficulty getting into the building last night to get to the committee between 6:30 and 9. In view of the fact that people in the whip's office purport to monitor these committee hearings, maybe the whip's office could make sure that doesn't happen again.

People, please tell us your names, your titles, and proceed with your submission, leaving us time for questions and comments.

Mr Mike Yorke: Certainly, Brother Chairperson. My name is Mike Yorke. I'm a business representative with the Carpenters and Allied Workers, Local 27.

Mr John Teffer: My name is John Teffer and I'm also a business rep with Local 27, Carpenters and Allied Workers.

Mr Yorke: We've prepared a document and I believe it's being distributed to the members of the committee. It deals with the carpenters' submission to government hearings on labour law reform.

First, I would like to give a preliminary, that the Carpenters and Allied Workers, Local 27 represents 6,000 men and women in the construction industry. As a union we are actively involved in apprenticeship training, skills upgrading, health and safety education, employment equity outreach, literacy training and various community issues. We are constantly organizing non-union companies in order to bring the benefits that we have won to other workers.

In general, Local 27 would support and endorse the submissions of the Ontario Federation of Labour. The federation covers many of the concerns that affect our membership, so we will concentrate on those areas of concern to the construction industry such as organizing activity.

The original reform discussion paper correctly admitted that at present, "Employees can face substantial hurdles when they attempt to obtain trade union representation and membership." This is true in any non-union workplace in the province, but is far worse in the construction industry where the instability of employment makes it very easy for reprisals to be carried out. Because the numbers of employees fluctuate continuously and there is no seniority system, it's a well-acknowledged fact of life that troublemakers can be easily taken care of. Threats of closing a company and opening up again are taken very seriously because of the ease with which an employer can disappear into the currents of an ever-changing industry.

As a union that is constantly organizing, we face a number of employer strategies to frustrate the will of the employees to gain union recognition. They usually involve firing—such as layoffs due to lack of work—or threats of firing union supporters, denying access to union representatives on third-party property and padding of employee lists to cause lengthy examination procedures that delay certification for months. Of course, in construction that length of delay may mean the employees are denied the benefit of unionizing as the job may be long completed.

To illustrate our concerns over employer abuse of power during certifications, let us list a number of examples. In almost every certification application filed by this local in many areas over the last three years, employees have suffered reprisals.

In Huntsville, two carpenters were fired by Belrock Construction. Their complaint was settled many weeks later on a without-prejudice basis where they received some lost wages but were not reinstated.

In Toronto, Tartu Construction dismissed one worker for signing a union card.

In Toronto, Bemar Construction dismissed a number of carpenters and labourers as soon as it discovered an organizing drive under way. The owner then selectively rehired only certain employees in an attempt to minimize possible liability awards while still teaching them a valuable lesson.

In Alliston, five carpenters chose to join the union on April 7. Two days later all five were dismissed and replaced shortly thereafter by new hires. At present, 119 days later, the certification application is still before the OLRB and their section 89 complaint for unfair dismissal has not yet commenced. The first day of their hearing in fact is not scheduled until mid-September.

We feel that the right of employees to join a union without fear of reprisal does not exist in Ontario today. In real life, workers' lives are governed by levels of coercion that have no place in the 20th century.

Accordingly, we feel strongly that all the proposals to cover organizing activity must be strengthened. Of particular importance is the proposal to require that the OLRB commence a hearing within 14 days of the filing of a complaint arising from discipline or discharge or related to an organizing drive. This would only have meaning if, as suggested, the OLRB were required to sit on consecutive hearing days until the hearing is completed and a decision issued immediately.

However, the change from a seven-day period to 15 days is a significant retreat by the government. Employers are able to get hearings scheduled within hours of an application for a cease-and-desist order. Surely someone who has been unjustly stripped of their employment should be able to expect a hearing within a reasonable time. The act should require the hearings to commence within seven days of reprisal and continue every day until completion, at which time a board order should be issued.

1400

Access to third-party property is vital in construction as virtually all work is performed on third-party property. The owners or developers often deny access to organizers even to speak to employees during their own time, such as at breaks or before work or at lunch. Where contractors are working in a shopping mall or office building, the inability to reach employees at the site means that it's virtually impossible to determine which employee is actually working for the contractor in the appropriate craft bargaining unit.

Another option that was outlined in the discussion paper was the requirement to post a list of employee rights in the same manner as health and safety postings. This would be a clear step forward in ensuring that workers can be informed or can make informed decisions about their own

future, yet it too has fallen on the cutting-room floor in order to appease companies who have little intent of providing those rights.

The certification process: Local 27 endorses most of the amendments relating to the certification process, with the exception of moving the date of membership evidence. We feel that given the fact that employees are often absent from work due to inclement weather or work scheduling, it is fairer to allow the extra time until the terminal date for the union to submit proof of membership. This may remain as a practice different from industrial applications. We do, however, agree that petitions or revocations are almost always tainted by management and should no longer be permitted.

What is missing from the bill are penalties for abuse of process by employers seeking to frustrate the certification. The practice of padding the employee list is rampant in construction because work changes daily and craft jurisdictions are wide and often overlapping.

We have experienced every trick from forged time sheets to replies that list every single employee of a general contractor, from the superintendent to the truck driver, as a carpenter. We have had certifications delayed by up to one year due to such fraud. The act should include statutory penalties for employers issuing false statements; failure to do so simply encourages those who flout the act.

Reducing industrial conflict: Local 27 strongly agrees with the proposal to put an end to strikebreaking. The use of replacement workers is featured more and more as new sectors of the workforce try to exercise their rights to attain a collective agreement. Often the result has been that the union has been broken and revenge is exacted on those employees who helped organize their fellow workers.

Picket line confrontations will sometimes lead to violence, as workers with many years of service to a company begin to fear for their future if production is successfully continued by others taking their jobs. Perhaps most harmful is the racial tension created in a community if unemployed immigrant workers are the ones desperate enough to cross picket lines to secure a day's pay.

We want to ensure, however, that the definition of "the establishment subject to the strike or lockout" includes all work that a constructor or contractor is engaged to perform.

The other proposal which is vital to our membership, but has been dropped from the bill, is the right to respect picket lines. It is the right of every worker to exercise his individual conscience in choosing to respect a picket line. This should be an absolute and not subject to any other restrictions. The history of industrial relations has shown that workers will exercise this right no matter what legal regime tries to proscribe it; all that varies is the severity of punishment applied.

The same is true of unfair limitations on the right of workers to withdraw their labour. Action by employees should only be deemed to be a strike if it is intended to change the terms and conditions of a collective agreement between the employees and their employer.

Related employers—construction management: The process of constructing major projects has changed over the decades since the end of World War II. Originally a

general contractor would hire all the trades necessary to build the structure of a building and would contract out the mechanical portion of the work to specialty contractors. As technology changed and specialization occurred, more and more of the work was divided into subcontracts and let out. This resulted in the widespread negotiation of subcontracting clauses in most of our construction collective agreements.

Practice has changed to the point that the vast majority of construction work is now performed by subcontractors, and the traditional method of building with a general contractor is being replaced with a process of construction management. Nearly all the major contractors now also operate as construction managers, where the subcontracts are signed directly by the owner and are overseen by the manager. The issue of contractual responsibility of these managers to uphold the subcontracting provisions of their collective agreements has been the subject of much concern in the industry.

While the bill addresses similar concerns of contract tendering in the service sector, it has omitted any resolution to the problem in construction. The fact is that a company that goes from working as a general contractor to being a construction manager is still the constructor. While that arrangement is sometimes established to circumvent union rights, it's now become so prevalent for legitimate business reasons as to constitute a significant change in construction labour relations.

The act should therefore be amended to take into account this change. Subsection 1(4) should include the requirement of an employer that acts as a constructor or a manager of construction to ensure that all of its subcontracting or contracting obligations are met on projects where it is the constructor or manager.

In addition, the discretionary powers of the board under subsection 1(4) should be removed so that a company is automatically bound to the agreements of its related company.

In conclusion, we'd like to emphasize that reform to the Ontario Labour Relations Act is long overdue. Workers have had their most basic rights to bargain collectively frustrated for decades by laws that either blatantly favour employers or are subject to such abuse by management lawyers as to be rendered near useless.

Those who are pursuing a free trade agenda have little commitment to a society which offers a just and well-balanced set of social relations. They are making their opposition to any progressive reforms well known through the media and other avenues in an attempt to persuade the government to abandon its commitment to social justice.

On behalf of the members of our union, both present and future, we urge you to move forward with substantial reform in order to provide the basis for a more just Ontario.

Mr McGuinty: Thank you, gentlemen, for your presentation. I've had a little experience in matters relating to labour and unions, but one of the things I've always thought, and I still think most people in Ontario believe this, is that the best expression of a democratic right is the right to vote by secret ballot.

When I've raised this with representatives from the labour sector, essentially they're saying that I'm rather naïve and that although that may be true generally, there's an exception when it comes to the matter of union organization, that different circumstances obtain and that it just wouldn't work there.

What I'm asking you is, what will we have to put in place in order to ensure that at the end of the day we could have a secret ballot so that at the very end an employee would have the opportunity to choose, free from inducement by either side? Is that possible? It's been rejected to date, from what I can see, but I'm just wondering, why would it not be possible? What would we have to lay down as preliminary to that?

Mr Yorke: I think it's quite possible. However, we're also talking about changing much of the structure within our present society before we get to that point. The experience I have had on many, many construction sites is that the dynamic of power between the employer and the employee is so unbalanced at present—it is mentioned maybe that would be good in an ideal society or an ideal system, but at present I don't think it's relevant.

Mr McGuinty: Again, correct me if I'm wrong, but it would seem that when you can vote in secret, then the employer doesn't know who specifically voted one way or the other.

Mr Yorke: Right now the cards are in secret as well. The employer has no knowledge of who signed a card. We go to many cases at the labour board, and the cards are always kept secret, so the employer essentially has no knowledge of who signed a card in any event. But the power that takes place on a job site is so balanced in favour of the employers that if they have an opportunity to sway a vote one way or the other, they often make maximum use of that.

As an example, let me illustrate a situation. In British Columbia right now, after every certification drive, there is always a vote. The carpenters' union, in my understanding, has very rarely won a vote. Why? Because the employer has 14 days in which to coerce and to act and to put his pressure on the people, on the workers, so that when a vote comes up, it's invariably in favour of the employer. They know what happens if they don't do that. Often the employers out there have shut down businesses; again the same kinds of problems that happen here. People are fired on a regular basis.

1410

Mr Offer: In your presentation you spoke about the requirement to post a list of employees' rights, that this option was taken from the discussion paper, and that you believe that would be a clear step forward in ensuring that workers make informed decisions about their future.

Mr Yorke: Yes.

Mr Offer: There are two matters that come about from this. The first is that I believe what was in the discussion paper was not just the list of employee rights, but rather the list of employees—that a list of employees, containing names and addresses, would be beneficial to those in an organizing campaign to find out who are the employees

and where they live. Though you have not directly touched on that, I'm wondering if you might share with this committee what your feeling is on that issue.

Mr Yorke: I would have to say it was an oversight not to have mentioned that. That is something we feel is extremely critical, specifically when we're talking about third-party property. I mean, how do you get access to the workers? How do you approach those workers? Often-times we've been denied access. The police have essentially been called to pretty well escort the organizer away from the site. So a list of employees would be extremely beneficial. In many cases the employees are a little bit reluctant to come forward in view of the employer if the employer is in the proximity, so a list of employees would be extremely beneficial to us.

Mr Offer: Here is a dilemma I find myself in. I hear that knowing who the employees are and where they live is important in an organizing campaign, but I think, on the other hand, there is the right of an employee to keep his or her address confidential. It is their choice, and especially with female workers and what not, this is a matter which is of great importance. So I ask, notwithstanding the fact that the provision of a list of employees' names with their addresses would be helpful in an organizing drive, don't you feel that there is a superseding right of that same individual, that male or female worker, to keep his or her address private and confidential?

Mr Yorke: I think that's an important point. I don't know the exact language respecting the earlier proposals over how that information would be relayed to a union organizer, so on that I'll just leave it.

Mr McLean: In your brief, you said that "the right of employees to join a union without fear of reprisal does not exist in Ontario today." If Bill 40 is passed, do you think it will exist then?

Mr Yorke: I think the right will be there. Whether or not that's enacted is another question. We'll have to see, certainly, what develops after Bill 40 is passed.

Mr McLean: You indicate that the access to third party is vital. If you have third party going on a property to form and organize, do you believe that will cause any problem?

Mr Yorke: No, I don't.

Mr McLean: If you were the employer, would you want a third party coming on to your property to organize?

Mr Yorke: In the construction industry it's a little different. Often we're not working on the employer's property. Often you'll find that an employer is renovating a shopping mall or is in an office building. I would say a mall is quite often seen as a public space; however, for a union organizer, it's not a public space. Often we've attempted to meet the workers in an open area, the food court of any shopping mall you'd want to see, and the employer would recognize what we're doing, approach the mall management and ask them to escort us off the property. As the law stands right now, we have to adhere to that.

Mr McLean: Don't you think a secret vote would be to your advantage on construction sites?

Mr Yorke: It's my experience that the secret vote takes place when the worker signs the union card.

Mr McLean: You'd indicated earlier that the employer is not aware of who signs union cards.

Mr Yorke: That's correct, yes.

Mr McLean: I would have think that employers in at least 50% of the cases would know the majority who have signed union cards. Would that be correct?

Mr Yorke: Put it this way: In theory, they don't know who signed the union cards, but they have a pretty good idea, and that's why we're faced with all these reprisals. Someone who has talked about his rights as a worker on the site—let's just say the employer has a pretty good idea of who's signing the union card.

Mr McLean: Wouldn't it be better, then, if you had a secret ballot and no union cards? You'd vote and have a secret ballot, and then they couldn't ever reprise on anybody. That would be my opinion. I know of a union that would have been organized if it had had a secret ballot.

Mr Yorke: It's just that we've had many experiences where that has not in fact been the case. It basically delays the whole process, and during that delay the employer takes ample opportunity to coerce the workers either to change their vote or to line up with the employer's point of view.

Mr McLean: What number would you indicate you would probably have organized in the last two years?

Mr Yorke: In the construction industry?

Mr McLean: Yes.

Mr Yorke: Due to the downturn, our organizing has dipped a little bit. However, in my personal experience we've been involved with many certifications. We eventually win the organizing drive or we have the company certified, but unfortunately for many workers it's come too late.

Mr Ward: I'd like to thank you for an excellent presentation. I'm particularly pleased that you came up with some specific examples of events that have occurred in your local's experience of organizing that support your rationale for suggested changes to the existing labour law we have in the province of Ontario.

We're hearing basically two sides, one side in support of updating the labour laws, and the other side generally saying the bill is bad or that specific areas should be redressed. The people who are criticizing the suggested legislation are saying there is an existing balance today in the workplace, that the suggested amendments will tilt that balance in favour of worker representatives in the trade union movement. We're hearing from the proponents of the legislation, the organizations and individuals who are coming out in support, that apparently this balance isn't a level playing field at all, that it is tilted in favour of the employers, and specific examples are given. How do you answer the critics of the suggested legislation when they say it is a level playing field in today's environment, when you have specific examples?

Mr Yorke: My initial reaction to that is that I don't feel we have a level playing field at all. I certainly mention that in light of the free trade agreement and the proposed North American free trade agreement.

As an organizer or representative, I'm out on the site meeting with workers on a daily basis. I'm often meeting non-union workers who tell me they would love to join a union, they would like to be part of it, but they're basically—there are a number of euphemisms they use, but they're just out and out frightened of being fired or dismissed as a result of signing a card. So they say, "We'd like to be part of the union." Maybe workers aren't really too familiar with the whole process; they say, "If the company goes union, I'd love to be part of it."

That refers back to our list of employee rights as regards a certification or union representation. People don't have a clear understanding of how they actually get to be part of a union, so that's something we do on a regular basis as well, just sort of educate workers and discuss with people.

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Mr Ward: I think it's the general consensus that the workplace and workforce have changed dramatically in Ontario since the 1970s. That's why we feel it's important to update the existing labour laws, because we don't feel they've kept pace with the changes. We also feel it's important to develop greater cooperation and trust between business, labour and government, both generally across the province and specifically in the respective workplaces. We think that's the only way we're going to tackle the economic problems we're facing in the 1990s. Do you feel the workplace and workforce have changed since the 1970s? I know your local is very progressive. Do you have examples of existing cooperation and do you feel there are areas where we can develop more cooperation and greater trust between labour, business and government?

Mr Yorke: I'm glad you brought that up. Those are actually two interesting points. With respect to the first one, industry, especially the construction industry, is changing on a daily basis. New technology, new processes, new systems are coming out constantly. To some degree, that tends to deskill the workforce. Diametrically, it also demands a more highly skilled workforce but fewer of those more highly skilled workers.

The carpenters' union is involved in training people. We have 16,000 or 17,000 square feet where we're involved with apprenticeship training as well as rehabilitation of injured workers and retraining of older workers. That is in conjunction with the Toronto Construction Association and many of the employers whom we are in collective agreement with. We feel we're addressing the concern of the industry with respect to new technology and we're doing it cooperatively with the constructors we do business with every day.

If I may mention, talking about certification, maybe initially our relations with a number of the contractors weren't the best, when they dismissed people, etc, but I know from personal experience in a number of cases that after an employer has been certified and sees what the union has to offer in respect of trained apprentices, young people coming into the industry and the level of commitment our people are having when they're on the site, relations between the employer and the union have improved remarkably.

The Chair: Thank you. I want to tell both of you how much this committee appreciates your participation. You've spoken effectively and articulately on behalf of the Carpenters and Allied Workers and we appreciate your participation.

Mr Yorke: We appreciate the opportunity very much as well.

The Chair: We trust you'll keep in touch. Take care, friends.

FAIRWEATHER

The Chair: The next participants are people speaking on behalf of Fairweather. Would they come forward and seat themselves in front of a microphone. In the interim, other people should know there's coffee and some soft drinks over here. They're here for you to drink, to help make you a little more comfortable. Tell us who you are please, your title if any, and try to save the second 15 minutes of your half-hour time frame for questions and exchanges, which sometimes get very animated and lively. Who knows?

Ms Carol Cox: Certainly. We've been here before so we know.

The Chair: It's good to have you here again.

Ms Cox: Thank you. It's nice to be here. I'm not going to be the main speaker, David is, but my name is Carol Cox and I'm vice-president of human resources for Dylex.

Mr David Posluns: Good afternoon. I am David Posluns and I'm the secretary of the corporation of Fairweather. I'm also the chief financial officer of its parent corporation, Dylex Ltd.

I would like you to know that we greatly appreciate the opportunity to converse with you today on this issue because we feel it's very important.

Just for some background, Fairweather is a leader in women's wear retailing, with 133 stores across Canada and 62 stores in Ontario. Fairweather provides merchandise of top quality and value in congenial and convenient shopping environments.

Approximately 1,300 of our people work right here in Ontario. Because we are an Ontario-based company with almost 50% of our stores here, the negative implications of this bill could destroy the company.

One preliminary comment I would like to make is that my commitment to the retail sector in this province is both professional and personal. I was raised here in Toronto and educated in the United States, and have returned in order to help revive Canadian retailing. I recently returned from the United States, where I operated the Foxmoor and Brooks chains of retail clothing outlets. I also led the entry of the Canadian retail operation, Club Monaco, into the United States market. I'm familiar with both American and Canadian retail practices. I have returned to Canada in an effort to preserve a distinctive Canadian retail sector. This task is becoming increasingly difficult.

I am speaking to you today because I am very concerned that Bill 40 is a threat to the future of retailing in Ontario. The retail sector in Canada is struggling to cope with numerous pressures. To name but a few, consumer

confidence has been at a record low; consumer spending patterns have permanently changed as a result of demographic and social change; cross-border shopping persists and lures away an increasing portion of declining personal income in this province, and there is an increasing presence of US operations in the Ontario market.

Canadian retailers have responded to these changes by lowering prices, focusing their businesses, refocusing product lines, improving training, introducing information technology and retraining our employees.

Profound changes are placing tremendous pressure on the Canadian retail sector. In fact, the Ministry of Labour reports that in the first three months of 1992 alone, over 2,800 retail jobs were lost in Ontario, and this does not include layoffs involving fewer than 50 employees. It is likely that there will continue to be job losses and closures in the retail sector for the balance of 1992.

The challenge before us is much greater than simply waiting for economic recovery. John Winter, one of Canada's retail analysts, stated that statistics proved that for every job created in retail, a ripple effect is caused which results in two more jobs being created in associated industries such as manufacturing, distribution, construction and advertising. Ominously, the reverse is also true. When one retail job is lost, two others will ultimately disappear down the line. Mr Winter added that a positive change in the retail industry has a greater impact on the economy than a similar change in any other industry.

The retail sector is changing to better meet the needs of employees and consumers. We are building progressive workplaces and are implementing innovative programs. Our parent company, Dylex, invests almost \$1 million annually on employee training and human resource development. We offer employment opportunities to those who are new to the workforce—youth and new Canadians; those who are pursuing other careers—students and artists; and those seeking transitional employment. For others, there are full-time careers.

Dylex has not been immune from the harsh reality of retailing in Ontario today. The recession and other factors have had an impact on Dylex. Dylex has closed its Town and Country operations. In 1989 Dylex reported a loss of \$60.7 million. For 1990 the company reported a loss of \$3.2 million, and last year Dylex reported a loss of \$55 million.

This government has started to recognize the retail sector's crisis. Its recent policy decision to permit wide-open Sunday shopping will help to encourage Ontarians to shop in Ontario, but it will certainly not solve all these pressing problems. We need the government to take further action.

The government's throne speech and 1992 budget underscored that it is committed to the economic recovery and renewal of Ontario. For years, Ontario has focused on the natural resource and manufacturing sectors as the engines of prosperity. However, in the changing global economy the economic health of the retail sector is vital to Ontario's economic renewal.

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Ontario's industrial strategy outlined six competitive fundamentals. One of these is continuous innovation. Retail

activity drives product and manufacturing innovation. Our sector's proximity to consumers means that we are often the first to identify new product needs. Other sectors then respond. Retail also creates economic spinoffs in manufacturing, transportation and information technology.

When determining what changes will be made to this legislation, employers, labour and the government have a responsibility to make the economic renewal of the province their first priority. Government should be making every effort possible to help promote the Canadian retail sector in Ontario, not legislating policies which will only worsen the already bleak situation.

Bill 40 sets back retail employers and employees in confronting the challenges facing us. Bill 40 will impede new innovation, distance employers from their employees and slow down the pace of economic renewal. Bill 40 will also damage consumer and investor confidence, which is essential for economic recovery. The November discussion paper on labour reform has already had a negative impact on new business startups, new investment and reinvestment plans of those active in Ontario. Bill 40 falsely assumes that employers and employees cannot constructively work together without legislation.

Fairweather has learned, with stunningly positive results, that one of the keys to survival in the retail sector is ensuring that all employees work together with the common goal of getting closer to the consumer. This practice of flattening the organization through the elimination of layers brings all levels of the company much closer and makes the company far more effective in achieving its goals. True partnership is achieved by setting common goals and working towards them over time.

In a climate of mutual trust, this legislation will only undermine employers' efforts to work constructively with employees by adding back new communication layers to the organization. Imposing cumbersome and outdated processes based on practices from other sectors, other jurisdictions and from another era will destroy the initiatives under way to transform Canadian retailing.

Those who support Bill 40 argue that each proposal exists in some form in other jurisdictions. It is important to understand the cumulative impact of these proposals. Taken together, these changes represent a dramatic departure which significantly worsens the labour relations climate in Ontario.

I would like to outline four specific points of concern.

The purpose clause: At Fairweather, without a collective agreement, we offer substantive benefits and competitive wages, and with a flat organization there are opportunities for all employees to become involved in planning the strategic direction of the company. Furthermore, we invest in a large number of ongoing training programs and career advancement programs. The purpose clause of Bill 40 suggests that for unorganized workers the only way to improve working conditions is by forming a union. For organized workers it assumes that a union cannot win in free collective bargaining. These assumptions are both untrue and unbalanced.

Automatic certification: It is also disturbing that if the Ontario Labour Relations Board rules that an employer has

contravened the act during a union organization campaign, a union is entitled to automatic certification. This can be achieved regardless of whether the union has the support of employees. This is unfair and unnecessary.

Third-party property: The provision to allow picketing on third-party property is another specific concern of retailers. As I mentioned earlier, regaining the confidence of consumers is critical to achieving economic recovery. By permitting picketing on third-party property, neighbouring stores will be negatively impacted. Principles of fairness suggest that it is inappropriate to permit demonstrations or other forms of picketing on the private property of those parties who are not involved in the dispute.

In larger shopping malls with 200 or more stores there is a great likelihood of continual picketing hampering access to shopping in Ontario. Such demonstrations may also have an impact on cross-border shopping. Many shoppers may choose to avoid the picket lines totally and shop in conveniently located malls just south of the border.

At Fairweather we have made a commitment to work towards preserving a distinctive Canadian retail sector, a sector which will respond to the needs of consumers, train and develop our employees and contribute to the economic wellbeing of Ontario.

An important consequence of this legislation is that it will facilitate further US expansion into Ontario's retail sector. American retailers are penetrating the Ontario economy at an increasing rate. American retailers can simply add Ontario to their northeastern US distribution system. The product will be shipped an extra 100 miles from the US. There will be no new investment here. There will be no Canadian marketing, no Canadian research, no Canadian managers and no Canadian retail sector.

As Canadian retailers fail, American ones are entering the market. American retailers operate in a market that has a lower cost base. Their lower level of social services permits them to pay less tax and have lower wages. They operate on consumerism to drive sales and have a population base that allows for economies of scale 10 times larger than what Canadian retailers face.

With their stronger financial backing, preferential leases and greater staying power, American retailers are not vulnerable to this legislation. Ontario stores likely represent a tiny portion of an American retailer's economic activity. They will be able to withstand strike activity in Ontario. On the other hand, Canadian retailers that concentrate most of their resources in Ontario would be crippled by such a strike. They would not be able to operate across Canada. In fact, if a strike were to occur in December during the peak Christmas season, it could easily bankrupt most retailers in Ontario—a chilling thought.

We need to keep retail Canadian and help Canadian business to prosper in Ontario. It is my concern that the unintended consequences of Bill 40 make it impossible for us to do business here. If our costs increase as a result of Bill 40 and put us in a further weakened financial state, we will not be able to effectively compete in the long run.

As committee members it is your duty to consult and listen to the public concerns on this legislation. You are being told that the criticism the bill has received is hostile

and hysterical. I am speaking from a company that is fighting to remain viable in Canada, a company that is investing in employees and technology to be successful as an Ontario-based international retailer. I am here to say that the negative impacts of this bill are real. It is already affecting our ability to attract new investment. It will impair our ability to empower employees and introduce value added innovations. This legislation undermines the province's chance of economic recovery.

We want to keep our business in Ontario. We have roots here. We are active in the community, but the government is pushing us to make tough choices as a result of Bill 40. Given the current public policy climate, it is harder to stay viable in Ontario. We are working with employees to revitalize our operations. Public policy should support these efforts and not undermine them. Bill 40 is a serious step in the wrong direction.

Mr Carr: The government just recently unveiled its industrial strategy, and one of the platforms it champions is that we need more home-based industries. They said that multinational companies, for a lot of different reasons, don't invest here and so on. They said that this bill is going to help further that, but you're disagreeing. You're saying that as a result of this we will see more American retailers. Could you expand on that a little bit, please?

Mr Posluns: Absolutely. One of the advantages the Americans have coming here is that they've got great economies of scale and a lower base of operation, which means that they can offer lower prices and work on lower margins. We're fighting to get our cost structure in line so that we can compete on that basis.

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There are many Canadians who are very weak because they're small. If you look at a company like Wal-Mart, which is projecting to do \$52 billion in sales next year and makes, I don't know, several billion a year, and you look at Dylex, which is Canada's largest national retailer, we do not even do \$2 billion a year.

Let's say, for the sake of argument, Wal-Mart opened 10 stores in Ontario, and they were unionized. So they go on strike. Do you think that's going to impact Wal-Mart's ability to operate or is it going to make it in a position to want to give in to any demands whatsoever by any union? Not likely.

They're going to look at the fact that many Canadian retailers are weakly capitalized and if they're unionized are going to become incapable of acting in a way where they're going to be able to keep their costs down. I think they will come here. They're going to use their advantages in economies of scale to out-price us, and they'll look at this bill and probably look at it very favourably because it'll ensure the death of Ontario retailers.

One of the amazing differences between American and Canadian retailers, having been both, is that they look very much at what the worst thing they could do to a competitor would be and ensure that they do it. Strategically, I think this would work to their advantage.

We've got 60% of our stores here. A strike here would cripple us. We would not be able to endure a strike. This is

not an industry that is typical of other industries where unions have played a large role.

Mr Carr: One of the things the government has championed, and I suspect because everybody agrees that there needs to be better labour-management cooperation, but there's been the feeling that—and I heard that even this morning—unless you're unionized that cooperation can't begin. Could you maybe fill us in on any programs you have or what you've done as an employer to try to foster better relationships and cooperation with employees?

Mr Posluns: That's a good question as well because there's a fundamental issue that differentiates retailers from other sectors in the economy. The first is that unlike in, say, a steel mill where employees have no interaction with customers, the majority of people employed in retail are on the retail floor interacting with customers. The last thing we want is someone working on the floor who is unhappy, because she's not going to be able to convince a consumer that he should have his needs satisfied in one of our stores.

So as a sector we go to great lengths to ensure that employees are happy. We have to because it's the basis of our survival. What we have found is that the best way to do that is to have employees participate in management decisions, participate in shaping their direction and being involved in a tremendous amount of opportunity and development.

Due to the structure of chain stores, there is great opportunity for advancement because there are different opportunities, and for someone who's willing to excel, it's a great environment to be in. To encourage those winners to keep winning, we've got numerous training programs that are in place to foster their development. In fact one way we've been able to make people very happy in their environment is that we have things like upward assessment. It's not a one-way situation. We don't have managers who simply look at and evaluate employees. Employees also get to evaluate managers and that goes to that senior person's manager as part of his salary review. How do your employees view you? It's very important to the retail sector.

We've got things like an 800 number directly to the president. If someone's unhappy, he can go and talk directly to the president of the company. We have HR professionals in Fairweather and in every other Dylex division who act as the ombudsmen to make sure that employee concerns are managed.

We pay terrific benefits. We do all sorts of things to ensure that everybody's looked after and happy, because it's not in our interest to have unhappy people. They interact with consumers. That's our source of livelihood. They have to be happy.

So a flat organization where we look after people and they have a chance to participate is paramount to the success of the industry. To insert a new layer and to start saying, "Okay, now the only way you can speak to employees is through a union and you're going to have to deal with us," to me just destroys the nature of what is going to be necessary for the success of the retail industry. I'll tell you, any retailer that doesn't do what we're

doing is ultimately going to lose, because if its employees aren't happy, it's not going to be able to generate sales, and if it doesn't generate sales, it's going to lose.

So this bill works against us, it doesn't work for us, and it doesn't work for the employees, in our opinion.

Mr Fletcher: It's good to see you again. I remember you last year on the Sunday shopping issue. Is this the best way you spend your summer, coming around the committees?

Remembering what you were saying last year about your stores and everything else, you always did appear to be a progressive company, as far as we were concerned: the treatment of your employees, what you're saying. If I were a union organizer—I have negotiated from management's side and I've negotiated from the union's side also, so I've been on both sides of the fence—I wouldn't even come near your stores to try and organize.

I think you're doing the things we'd like to see happen in most industries in this province. It's the cooperation. If I could phone my boss to complain—and I have a problem getting in touch with my boss sometimes, let me tell you. Maybe he's listening, I don't know.

Interjection.

Mr Fletcher: If I could phone my boss with an 800 number, yes.

It's refreshing to hear that these are the things that are going on; these are the things we are trying to promote.

When I listen to what you're saying, I can understand your concerns, but as far as Bill 40 is concerned, in your case I don't see anyone going near your stores to try to organize your stores, especially with the progressive things you're doing. I can't see that happening, but I do respect your concerns.

Mr Posluns: I'll tell you how I feel that it does impact, even if we were not the subject of a union drive. The major issue as I see it is that as we're mall-based, if you look at a mall, where you've got typically several hundred stores, definitely some, if not a large number, are likely to be unionized, especially if they're not as progressive as we are. To us, what that means is there's always going to be some sort of activity going on in the mall whereby there's going to be interference with consumers. And what do consumers want today? They want a hassle-free environment and they don't want to pay any money for anything. They want to pay nothing, little. So if convenience is an issue, that's hassle-free shopping. They don't want disgruntled employees, they don't want to have to deal with bad service. They want good service, low prices and a hassle-free environment. If they come into a mall and there's a picket going on, they don't want that. That's not what shopping is about. Shopping is about fun. You know, if you've got to part with your money, you're going to want to do it willingly and you're going to want to have fun doing it.

Mr Fletcher: Tell Mr Mulroney that.

Mr Posluns: If you make the environment hostile or not fun, consumers have an alternative. They've got mail order, they can go to the US—and a lot of them do. Why not continue to do so? I'm not sure they're going to want

to be in an environment where they're going to be hassled in a mall. They're just not interested and that's going to affect us. Total mall activity is going to decline and there'll be alternatives that consumers will use to fulfil their needs. They're not going to need to go to a mall and they're not going to want to go to a mall.

Even if we weren't unionized, we're going to bear the brunt of it just because we're a mall-based operator. I think that would be true of anyone else. It's direct interference in the shopping experience and people want less hassle today. With dual-income families and all that sort of stuff, people don't have time and they just want to shop and get it done and they don't want hassles. And this bill will create a tremendous amount of activity in malls.

Mr Fletcher: Just that part of it as far as the malls are concerned; if we could get rid of that or change something there, that would alleviate some of the concerns you would have as far as that's concerned.

Mr Posluns: Yes.

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Mr Huget: Thank you for your presentation; I found it very interesting.

I would like to say at the outset that I don't see the impact of Bill 40 on workplaces that are already happy and employees who are already happy, as you may. I'm a little sceptical of that.

My question to you is, for workers in retail situations or with retail employers that are far less carnival-like in their atmosphere around the work experience and who may be experiencing serious problems in the workplace, how would you suggest they address their grievances? How would you suggest that the situation for them is improved, as you portray that organizing is not what they need and shouldn't do, that it will interfere with the business of the malls, that it will interfere with your business? How would you suggest to these workers that they address their grievances, that they get their problems solved, that they move their employment situation into the 21st century?

Ms Cox: We can speak for Dylex and its member companies; it's very hard to speak for other retailers. In networking and talking to other firms, we're encouraging them also to put in 1-800 numbers; we're encouraging them to put in grievance policies. We've produced pamphlets that we've sent out to our stores about how to contact human resources departments and presidents and general managers of your firm if you have a concern. We're encouraging them to do that. We're also encouraging other firms to put in the kind of training programs that we've been putting in.

Also, one of the biggest successes we've had—and David talked about it briefly—was upward assessments. I can't begin to tell you how good it is and how good employees feel that they have a chance to talk anonymously about some of their concerns and really to assess their bosses. This is the second year in a row that we've had this in. I don't know of many other firms that are doing this yet—this is very new—but it's been very successful.

We've also moved to self-assessment, so we've been having all levels of the organization being able to write

their own performance evaluation, which has been very good. We also sent out information to employees in the very beginning regarding what's expected of them, how they are going to be rated and what it means. We've been working very strongly with coaching and mentoring at every level in the organization.

We have a lot of employees in Ontario, and consequently across Canada, and these programs are relatively new. Dylex has just developed a corporate HR department—it's only four years old—at a time when Dylex was losing a lot of money. Retailers don't typically fund HR divisions, but they have and they've stuck behind it, and we've put in a lot of programs and got into a lot of divisions to encourage them to do this. Again, we're out there talking to other retail organizations, encouraging them to do the same thing.

Mr Posluns: Ultimately, the legislation, if it passes, will simply accelerate what will be the natural consequence to any firm that doesn't do this, and that is they'll go bankrupt, because if they don't address the issue and do become unionized, ultimately their cost structure is going to be too high for them to operate in what is already a razor-thin margin environment. They're not going to be able to compete, so they'll go out of business. They'll go out of business one way or the other, and Bill 40, as far as I'm concerned, will help to accelerate it.

Mr McGuinty: Thank you both for your presentation. During the past three days, I certainly have come to the conclusion that the state of relations between labour and business is abysmal, and I'm not sure there are any two other groups of society which hold each other in such suspicion.

You, by far, are certainly not extremists in terms of the position you advocate—and I appreciated the insight you lent with respect to your involvement in the American scene—but there was something you said that struck me. You said that a strike would cripple your Ontario base in that it would drive you to bankruptcy. Of course, that's premised on the assumption that a union would not recognize that, would not understand that a strike would effectively eliminate its jobs. Why is it that you think they would allow a strike to proceed?

Mr Posluns: I think there's a fundamental difference between the way a retailer operates and the way other businesses that are typically union businesses operate; that is, what is produced in the industrial sector usually does not have the same degree of perishability that retail products do. If a steel mill went on strike, the steel mill, for example, could accelerate production, have a huge buildup and sell it off during the strike and later on it could supplement it somehow or another; besides which, even if it couldn't sell it, it isn't perishable. Steel is steel and it's going to be in demand today and it's going to be in demand tomorrow.

In the apparel sector in particular, products have an incredibly short shelf life. They're only good over a couple of weeks. Every day that sits on the shelf, it declines in value dramatically. The only asset typically that a retailer has is its inventory, and every day that inventory sits idle is a day it declines in value. A short strike could cause such an incredible degradation in the balance sheet of a retailer

so quickly that the goods could become saleable only at a price far less than what was paid for them.

I don't believe there's a true understanding of the nature of the retail industry by people who are currently involved in unions because they're not used to dealing with that sector and how it operates. A short strike could just finish you, especially if that's at a time of the year when you have an acceleration in your sales, which is Christmastime.

There's only one choice: Just give in to every single demand because if you don't and you don't get your stores open, you're just dead and you have no options. You would shift the balance of power so dramatically into the hands of unions, especially if you couldn't bring in alternative workers. You'd have to close your stores and just sit there and watch your inventory value decline on a daily basis, and then that's it. You either give in and your cost structure has to go up, which means you can't be competitive, or you go bankrupt. Eventually you'll go bankrupt anyway.

I don't think there's an understanding of how this sector works and how razor-thin margins are today. And they're not likely to improve because this is not really related necessarily to the economy; it's related to changing consumer attitudes and changing demographics and changing issues with consumers.

The base of sales is declining. People aren't spending as much and they want to spend less, and it's getting more and more competitive. Margins aren't going to improve. This is not an industry that has any fat in it. We're seeing it. We're seeing bankruptcies like crazy, and we're going to continue to see them. As soon as you put in this additional instability, it's just going to spin out of control.

The Chair: I want to thank you, Dylex, Fairweather, for coming here this afternoon. You historically have been an active participant in the development of legislation and the committee appreciates your participation.

Mr Posluns: Thank you for allowing us to speak. We feel it's important that we work cooperatively to ensure the success of the economy of Ontario, because that's what we all believe in.

The Chair: Take care, friends.

TORONTO-CENTRAL ONTARIO BUILDING AND CONSTRUCTION TRADES COUNCIL

The Chair: The next participant is the Toronto-Central Ontario Building and Construction Trades Council. Could those people please come forward, have a seat, tell us their names, titles, if any, tell us what they will, but try to save the second half of the half-hour period for discussion, questions, dialogue, commentaries.

Mr John Cartwright: My name is John Cartwright and I'm the business manager of the Toronto-Central Ontario Building and Construction Trades Council. With me is Chris Thurrott, who is a representative of the council.

To start out with, by trade I'm a working carpenter, and by trade Chris is a plumber-steamfitter. We want to talk about Bill 40 and how we see it affecting the construction industry and construction workers. I'm going to read through our presentation and then probably add a few other comments in the middle.

The Toronto-Central Ontario Building and Construction Trades Council is an umbrella organization of 60,000 unionized construction workers in the greater Toronto area. We are here today to express our support for Bill 40. It is our belief that this legislation must be appreciated in the context of economic and social conditions of Ontario in 1992.

Our economy has been ravaged by free trade and corporate restructuring. Basic social programs such as medicare and unemployment insurance are threatened by neoconservatism. The construction industry is in the depths of a depression and our members are suffering up to 50% unemployment in some trades. In these tough times working people need to be able to defend their social standards and working conditions. This hinges very clearly on their right to organize and bargain collectively.

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There are those in the business community, construction contractor organizations in particular, who have assailed the citizens of Ontario with dire predictions of job losses should Bill 40 be enacted. These vitriolic attacks on the labour act amendments have been echoed, to a remarkable extent, by the two opposition parties.

We grant such corporate Jeremiahs scant credibility. After all, their counterparts in 1886 predicted the demise of manufacturing in our country when the Factory Act was promulgated to limit the working hours of children under 12 and 14. It is time to put Bill 40 into perspective.

In fact we wish to register our disappointment that many of the original proposals have already been diluted. We have full confidence in the Minister of Labour when he says that constructive changes submitted at these hearings will be given due consideration. We would like to draw your attention to several specific areas which deserve re-evaluation.

The earlier version of Bill 40, the discussion document, contained two provisos that would have eased friction between the parties during an organizing effort. They should be reinstated.

The first is that a trade union should be given a list of names of proposed bargaining unit employees after it has filed an application for certification. I want to clarify right here that we're talking about names, not particularly addresses.

Second, workplace notices of rights and obligations should be on every site, in every workplace, in addition to any more informal information source. That it's been dropped under pressures, I assume, from the employers and others is quite scandalous. We have, at this point in time, notices talking about health and safety and people's rights to that. They should also have some notices of their rights to undertake what's supposed to be a guarantee under the law: the right to choose to join a union.

Despite advances in the proposals dealing with discipline during an organizing drive, hearings should begin within seven days of filing a complaint, as opposed to the 15 days proposed in the bill. This is more than adequate time for the development of legal argument.

The proposed section 92 raises the question of timing and adjudication of complaints. This matter is of critical

concern in the construction industry, as is already acknowledged in sections 102 and 124 of the act.

The principle of speedy justice in discipline cases relating to organizing should be extended to cover all deliberations of the board. We would suggest that the act be further amended to require board decisions to be made in general within 45 days of the last hearing date. Further, in the interests of eliminating delays, we recommend that more panel members be hired by the board.

Consider the situation—we're talking about delay in real life in the construction industry—of Eric Dagenais, construction worker, health and safety representative for the carpenters at the Bay-Adelaide complex. Bay-Adelaide, as everybody knows, is downtown. He was one of the first health and safety representatives appointed under Bill 208, just three or four days after the bill took effect. Within 10 days he was laid off, unjustly dismissed. The hearings before the OLRB ordered his reinstatement took six months.

In those six months, everybody on that site knew that anybody who was foolish enough to stand up for health and safety or any other conditions was playing a stupid game and that people should just bend their heads down and close their eyes to any health and safety violations. It's now over 18 months since Eric Dagenais was unjustly dismissed from that position, as determined by the board. He has yet to see a penny of wages in restitution for the time he lost; six months' lost wages and he has yet to see them. That's the kind of reality that takes place in the construction industry today and that's the kind of reality for which we need a Bill 40 to bring some balance into labour relations in this province.

This council wholeheartedly endorses the most publicized portion of Bill 40: the limitations on the use of replacement workers during a strike. Many tradespeople had family and friends who worked at Eaton's. Many a construction boot walked the winter picket lines after working the day on downtown towers. If Bill 40 does nothing more than prevent a repeat of Eaton's, then it will have advanced Ontario into the ranks of civilized society. We share the view of many that section 73 should be further strengthened with greater prohibitions on the use of replacement labour. I want to talk about that a little bit more off the brief.

I've been on the picket lines myself, where Eaton's workers, women, mothers, wives, neighbours, were out there day after day in the freezing cold, and all they were suffering was a planned attempt by the employer to humiliate and degrade and starve them into submission. The employer had absolutely no interest in having a long-term collective relationship with its employees.

I was on the picket line with Visa workers, women and new immigrants who were working in the so-called glorious white-collar service sector, and it was the same thing. They were being put out in the streets and their jobs replaced right away in order to give a very clear message to anybody who dared exercise his so-called rights that he might as well forget it.

Some seven or eight years ago I was on a picket line with a small paper manufacturing company. It was organized by the carpenters, 20 people. They came back to work after the long holiday in August only to find that all their

jobs had been replaced by new immigrants, people who had come from Viet Nam. It created such an incredible tension of racism that it was very difficult for the union to explain to those workers who had just lost their jobs that it was not an issue of race and not an issue of colour, not an issue of people's backgrounds, but the fact that the employer had absolutely no interest in following what should have been his moral obligation to look at determining a collective agreement with his employees. That bargaining unit, over the period of weeks and months, was finally starved into submission, people earning little more than minimum wage until they disappeared. They gave up, and the so-called lofty ideals of any justice in this society were lost to them.

Opponents of the labour act amendments have argued that the scales of equity in labour-management relations will be conclusively tipped to the advantage of workers. Even a cursory examination of the existing definitions of "strike" and "lockout" in the OLRA makes a mockery of that claim.

The act should be further amended to put management and labour on an equal footing. An employer is guilty of a lockout if the Ontario Labour Relations Board is able to determine that he is motivated by a desire to amend an existing collective agreement. No such subjective criteria are used in defining a strike. It is our belief that rights of workers are unduly restricted by the definition of a strike which does not include the concept of a work stoppage or slowdown aimed at changing negotiated working conditions.

The lack of parity on this fundamental issue is clearly demonstrated in the haste with which any employer is granted a cease-and-desist on the mere threat of a strike, while wholesale dismissals of employees that have taken place in the construction industry in the last year may take months of hearings to resolve.

A legal picket line is sacrosanct to many workers. The act should recognize the right of an individual to follow his conscience and honour lawful picket lines. Many of the collective agreements of our affiliates contain a clause which grants a worker the right to refuse to cross a picket. We suggest that minimally such provisions be upheld as legal.

Over 25% of the language in the OLRA is specific to the construction industry. Bill 40 does not address one of the most glaring inequities in construction labour relations, and that is subsection 1(4) of the act.

The construction industry is characterized by a plethora of trade-specific subcontractors who in the past have been retained by a general contractor to perform work on a project. The general supervises the work of the subs, ensures contract compliance, certifies their work for payment and eventually assumes warranty responsibility. "Union security" in the construction industry is partially achieved through the subcontract restrictions on the general contractor. This has been a well-recognized and established practice. Times change, and general contractors are increasingly being replaced by project managers. These organizations perform the same functions as a general, but all subcontractors are technically hired by the owner/client. Union agreements are in fact circumvented.

Subsection 1(4) of the act should be amended to include construction and/or project management as a related activity under "common control," in the same way that there is some suggestion that it will be extended to the service sector. The current language of subsection 1(4) is discretionary. The board may treat corporations, firms etc as constituting one employer and grant such relief as it may deem appropriate. Section 63, on the other hand, the industrial counterpart, is much less ambiguous.

Many of the cases which construction unions have taken to the OLRB on successor rights under subsection 1(4) have hinged on the matter of undue delay in recognizing what are clearly convoluted business reorganizations. In fact, in some cases in subsection 1(4) we're faced with the idea that a trade union should be a combination of private detective agency, Superman and Big Brother, with an ear on every single business doorstep to find out what's happened with companies that changed names, changed locations and tried to disappear to escape their obligations to their employees and their union obligations. Construction workers should not lose their bargaining rights as a result of corporate sleight of hand. We urge this committee to recommend to the government that subsection 1(4) of the act be changed to redress the current inequity.

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I'm going to leave the text for a moment to talk about the representations our employers make to this committee and have made previously on the discussion documents. The Council of Ontario Construction Associations has been one of the most vehement opponents of Bill 40, which we find kind of unusual, because whenever construction trades go out and sit down with their employers, which we do on a very regular basis, the first thing we're told is: "Why don't you go and organize our competition? Why don't you bring my competitor into the same collective agreement as I have?"

The fact is that within the jurisdiction of the Toronto-central Ontario council, the vast majority of constructions workers are overwhelmingly union, so we hear that refrain on a regular basis: "Why don't you go out and organize these people who are now starting to bid on our work?" Yet COCA is at the same time saying, "Please ensure that it remains as hard to organize companies as possible."

I think you heard earlier today of examples of weeks, months and sometimes almost half a year or more than half a year, when people have chosen to join a union, how they've been fired and they can't get any redress from the board. When you're in a small community that our council covers, including Barrie or Oshawa or Peterborough, and there's a large job onsite and people are fired and it gets known throughout that community, all the good deeds and all the accolades in the world business people will talk about, how they want to be fair, don't mean anything, because everybody's already learned a lesson. So COCA is, I think, in a very unusual situation of suggesting that Bill 40's not necessary and that in fact workers should not have any more rights to join a union if they please.

I find it interesting that one of the chief spokespersons for COCA comes from St Marys Cement, one of the largest conglomerates of cement manufacturers in Canada and

one of the cartel that was identified in the Globe and Mail on Wednesday, July 8, about the "Cement Industry Under Scrutiny in Europe, Canada" for operating monopolies that have added, in some cases, up to \$1,000 extra price on a single-family dwelling in this province.

That kind of power exists in this province, ladies and gentlemen, and it exists and it faces a single one or two or three construction workers who are just trying to make ends meet and put bread and butter on the table when they want to think if they want to join a union or sign a union card. It's the kind of inequity that exists in real life in the construction industry as well as any other sectors.

I want to emphasize about the construction industry that our jobs start and finish and start and finish and start and finish and you're not like a regular place where somebody's there 40 hours a week 50 weeks a year. Employers can lay off and dismiss and find lack of work to get rid of anybody they want. There's so little ability to be able to identify that in fact there's an anti-union animus involved in that, really there is no protection for workers to exercise their so-called rights, along with the fact that many workers in the industry do not enjoy English as a first language, and as soon as they run up to the bureaucracy that's involved with the labour board, they're in trouble.

In conclusion, we commend the Minister of Labour for his foresight and courage in bringing the Ontario Labour Relations Act in tune with the modern world. We share the belief that a rebuilt Ontario must rely on worker participation in the economy, and Bill 40 is a step at this stage—not a complete enough step—in the right direction, because it's our belief that when critics of this legislation cite the recession and claim that this is the wrong time to introduce reform, we suspect and in fact we know what they mean is that there is never a right time to give workers more rights. The right time is now. Thank you, ladies and gentlemen.

The Vice-Chair (Mr Bob Huget): Thank you very much for your presentation, gentlemen. Questions?

Mr Klopp: Thank you for your interesting comments. You mentioned, off the script, new Canadians and their problems. Could you expand what you mean by that? Is it our ethnic minorities etc? We feel this bill will help them. Could you expand?

Mr Cartwright: It's no secret, and in fact everybody in this room should know, that certainly in the southern Ontario area, but also throughout the province, a very high percentage of the construction workforce is made up of immigrant workers of different backgrounds, Canadians by choice, and that English is not their first language, and in fact many of them come from what were either very repressive or very autocratic societies.

When you drive up Dufferin Street in the morning in the summertime and you see guys who are standing at the corner of Dupont and Dufferin waiting to be picked up by a truck by Tony or Joe, and they don't know what the company name is and they have no idea who it is they really work for if they ever wanted to find out how to put a lien on that job, and they have no idea how to speak English, because they've been here just a short number of years, then you're talking about people who do not know how to

exercise their rights. What's important is that those people be empowered in their ability to exercise their rights.

The words "Hogg's Hollow" will always sit in the back of my mind as a symbol of the kind of horrible fate that can happen to immigrant workers in this country. The Hogg's Hollow disaster, of course, was that trench and tunnel collapse in Toronto a number of years back that first sparked the idea that immigrant workers must force their way to be able to join a union in order to have any defence around health and safety or any kind of conditions.

When you come from a place—South America—where to join a union means in some cases you're actually signing a potential death warrant, or you come from a place that's just a conservative, small, patriarchal-type of community, like the islands in Portugal or whatever, and you're looking at questioning and saying, "I actually have the right to say that my boss should pay me this, or is supposed to allow me to have a health and safety spokesperson on the job," it's a huge step to be able to say, "I want to see that happen."

It's not a step that will be brought about by—so-called—a few more 1-800 numbers of enlightened employers. It's a step that will only be rectified when those people are able to organize collectively to elect or choose their spokespersons, who can then service them in their own language and defend their rights in their own language. That's what that's about.

Mr Ward: I appreciate your brief and the comments and suggestions on how to improve Bill 40 that were included. We've been hearing presentations both for and against Bill 40. The people who have spoken against Bill 40 have suggested that the whole bill is wrong, or some specific segments of the bill should be changed or modified. Primarily, the thrust of their argument is the suggestion that the current labour conditions in Ontario under the act, prior to Bill 40 being implemented, are that it's a level playing field, that the balance of power is equal as far as business and labour are concerned.

The presentations we're hearing from the supporters of Bill 40 are in fact—and you brought some specific incidents that have occurred in your council's experience—that it's not a level playing field at all, but that the balance of power is tilted in favour of the employers. I would like you to expand a little bit on your thoughts on that. Do we have a level playing field or is the balance of power tilted in favour of the employer?

Second, our government believes that if we're going to accomplish our objectives as a province and maintain a quality of life we've enjoyed for so many years here in the province, that if we're going to meet the economic challenges of the 1990s, we need greater cooperation. Your sentence in your concluding remarks, "We share the belief that a rebuilt Ontario must rely on worker participation in the economy," I think supports that theme or that direction. Could you expand on that as well?

Mr Cartwright: I think it's important for the committee to understand that within the construction industry we have bipartite bodies, labour-management bodies, that sit down and deal with everything: health and safety, apprenticeship

training, standards, job promotion, job creation, and in some cases even design awards for architectural initiatives.

We sit down with our employers to handle health and welfare plans jointly, to trustee them, to look at what's best for the people involved, to look at pensions, training and all aspects of our industry. We have what we think is an extremely cooperative approach to how we handle the industry with the employers under the collective agreement. That's with the people we work with.

It's interesting that sometimes the people who fight hardest against you when you're trying to organize them, after a couple of years of working with the unions and understanding what we're doing about providing skilled trades people, involving young people to learn the trades, ensuring quality of work, upgrading and training, are actually very happy in working with us and sometimes become our best friends and colleagues in some of those joint ventures.

If you're asking the question, is it a level playing field? the only person who could believe there's a level playing field in management-labour relations in the non-unionized sector is management. I started the trade non-union, and the first time we tried to organize in the shop where I was, the guy sitting next to me, on the bench beside me, was afraid to drive me home at night any more because he thought he would be tarred as somebody who was a union supporter and he'd get fired.

The fact is that there's a coercive power that exists in any non-union place, and that is very clearly that if you rock the boat, you're not going to be somebody who is going to encourage business the way management wants it. You're expendable and you should be gotten rid of. Nobody has to read very far in any of the human resources books to understand that.

1520

The Chair: Thank you. We've got to move on to Mr Offer.

Mr Offer: With respect to your submission, you've spoken at length about the right of workers to strike, to organize, to associate, to be part of a union if he or she wishes. In that regard, you've spoken about how the obstacles are there today so that organizing is not as effective in your opinion as it might otherwise be, that there are some difficulties workers have in an organizing drive.

Keeping in mind the comments you have made, the obstacles to organization which you have brought forward, would it not be in the best interests of the workers that if there is to be an organizing drive, there be the opportunity for each worker to cast a secret ballot, whether he or she wishes to join a union, whether in this respect there be an opportunity of information given to each worker as to what union membership may mean to him or her, and also an opportunity on the part of the employer to provide, in a non-coercive, non-intimidating way, what it means to him, and at the end of the day allow the workers, in a free, secret ballot to make their choice?

Mr Cartwright: I think in a perfect world, Mr Offer, that would be a wonderful idea. If every employer who operates in this province operated as an angel, I think that would be just absolutely an outstanding idea. We would have

democracy at all levels. In fact, we'd have democracy in all kinds of programs that are being proposed to workers.

The reality is that this perfect world does not exist. There is no such thing as a free, democratic vote in a non-union workplace anywhere in this province or this country. People are threatened from the word go: "If a union comes in here, we're going to close down. If a union comes in here, we'll be uncompetitive and we'll go bankrupt. If a union comes in here, you'll be replaced somewhere else." That doesn't have to be written down in black and white, because it's whispered in the lunch shack, it's left as surreptitious Xerox copies in the shack or when people are finding their cars.

There is no such thing as a free and democratic system in a non-unionized workplace. There is only one power and that is the power of the employer to choose what's going to happen with that entity. Look at the experience of some of those ideas in British Columbia, for instance, where the Secords brought that in. What's happens is constant manipulation so that the time required for a vote is used to pad the list or fire people or lay them off or, I'm sorry, discover a shortage of work and therefore we no longer have the same number of people. The time that's used that way is constantly used as a method of intimidation. It just will not work.

The Chair: Very briefly, please.

Mr McGuinty: You made reference to an ideal—you termed it an ideal—environment, a workplace where we could effectively use a secret ballot. I want you to think of what could be, then. What is it that we have to put in place, what legislative measures have to be enacted in order to ensure that we could achieve that ideal? What do we have to do to ensure that you would feel comfortable with people having a free vote in the absence of anyone going into a booth somewhere and voting?

Mr Cartwright: It's impossible to be able to design a non-union workplace that provides an environment to have a free and democratic vote, period. It's impossible to do that because there is an element of coercion that exists, and I'm using that word because it is a very real word. When we talk to our stewards about health and safety and tell them who it is in the union sector who has to enforce health and safety, we tell them very clearly, "Tell the foreman that he's the one who has to enforce health and safety," because he has the ultimate coercive ability to say to a tradesman or woman at the end of the day, "You're gone, because I don't think you're working safely enough."

That's the kind of coercive ability that is there in all sectors, and when you have free trade being jammed down our throats and everybody says, "From now on we've got to start looking at being competitive"—as they say in McAllen, Texas, they can supply labour in Mexico across the Maquiladora for less than half the price than you have to pay in Hong Kong or the Philippines—when that's in the paper all day that this is what you are supposed to compete against, there's a very, very clear message out there: "Don't exercise your rights, because if you exercise your rights, you're finished."

Mr McLean: I'll just have one short question. The fact is that when you're talking about rights and votes, there were an awful lot of promises made before the last election and there was a vote held—

Mr Cartwright: You're talking about the federal election?

Mr McLean: No. I'm talking about the last provincial one, which you are well aware of. There were a lot of promises made and there was a vote, which they called a democratic society expressing its opinion. Are you saying that cannot take place in the workplace?

Mr Cartwright: I'm saying that any vote that's held in a non-unionized workplace is not held in an environment where it can be made a free and democratic vote.

You see, there's an interesting thing about where this is going. I had a discussion the other day with one of the major contractors. He talked about the whole Bill 40 thing and said: "You haven't consulted with us enough. You haven't consulted with business. You haven't talked with us enough about this thing."

I said: "It's kind of interesting, because your association supported free trade with the United States and promised us lots of jobs and now we've lost over 400,000 jobs in Canada as a result of that. The Mexico free trade deal, which was never part of the last federal election, which was never brought as part of the mandate in front of the voters, is being secretly negotiated with the full support of the Business Council on National Issues, of every employer group in this country, and you're telling us that we're guilty of not having enough consultation? When the whole future of this country is going to be dragged down into the mud by the actions of a small élite, a corporate élite in this country, you're talking about democracy and consultation?"

I think quite frankly that we're barking up the wrong tree when some people talk about the issue of democracy and consultation, because working people are faced with an economy and a society that are being moulded and transformed in front of their very eyes and they've never had any say in that taking place.

Did they have a say in the last federal election? They had a say in the last federal election about whether there would be a vote or not a vote, and then they proceeded immediately to bring in a deal with so many strings attached. Mr Mulroney talked about sacred trust. Now we have unemployment insurance being cut to the point where construction workers all across this country have exhausted their unemployment insurance and are going on to welfare. We have cutbacks in medicare, another sacred trust that was never supposed to be touched. We have cutbacks on a fair wage in the federal, so that all kinds of construction projects can go non-union at minimum wage. Those are the kinds of sacred trusts that are being proposed that are changing this society inextricably.

This is exactly why something like Bill 40 is needed, because the corporate interests, the business interests, whether they be the Council of Ontario Construction Associations or whether they be Business Council on National Issues or they be retail councils, want a certain logic of the

free trade agenda to just take place. They want that logic to take place so that workers will be faced with no other alternative but to roll back their standards, to undermine their conditions and to say, "I really can't afford to sign a union card, because my boss will move to Mexico tomorrow."

Bill 40, as weak as it is, and it needs strengthening, is one thing that will actually give working people a chance to be able to say, "Well, at least we can fight back against this thing that's coming down on us, that we never had a chance to have any say or any input or any democracy in at all."

Mr McLean: Something like the Constitution that's taking place today.

Mr Cartwright: The Constitution is part of exactly the same issue.

Mr McLean: The same thing.

Mr Cartwright: Exactly.

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The Chair: Go ahead, Mr Carr.

Mr Carr: A real quick one: You talked about intimidation and problems with regard to companies. The fact of the matter is that on the other side of it, unions can lie to people. They can intimidate people. Have you ever seen that happen, and wouldn't a secret ballot eliminate that concern so that in the privacy of a polling booth, nobody on either side could intimidate anybody because no one would know? How do you answer that?

Mr Cartwright: I resent that question, because when a union organizer goes out—do you know who a union organizer is? He's somebody, in our industry, who has worked with the tools and worked in those same conditions, and he doesn't lie to people. He doesn't have the right to—

Mr Carr: There's no potential to lie to people?

Mr Cartwright: He doesn't have the ability to tell them stuff that's not true because people can see with their own eyes what's happening to them and what happens to their neighbours and other people in this industry. So I resent that. I resent that accusation. I haven't stood here and suggested that employers will lie to people. They're telling the truth.

Mr Carr: Then why not have a secret ballot?

Mr Cartwright: Because they're telling them, "If you sign a union card, this is going to happen and that's going to happen."

Mr Carr: Then why not have a secret ballot so that there cannot be the perception of either side intimidating? Why are you against the principle of the secret ballot?

Mr Cartwright: As I said, if there was a perfect world, we wouldn't need United Way and we wouldn't need welfare and we wouldn't need a whole bunch of things, but right now there's no perfect world, and the employers running non-union places at this point in time do not allow a free, democratic vote. It would be impossible because of how they run their show and the coercive ability they have to manipulate and influence any kind of outcome.

The Chair: Gentlemen, we appreciate your coming here this afternoon and the representations you've made on

behalf of the Toronto-Central Ontario Building and Construction Trades Council. You've made a valuable contribution to the process here and we're all grateful. I trust you'll keep in touch. Take care.

SOUTHAM INC

The Chair: The next participant is Southam Inc. Gentlemen, please seat yourselves in front of a microphone, tell us your names and your titles, and tell us what you will. Please try to save at least the last 15 minutes for questions and dialogue.

Mr Russell Mills: My name is Russ Mills and I'm the president of the Southam Newspaper Group.

Mr John Simpson: I'm John Simpson. I'm director of corporate affairs for Southam Inc.

Mr Mills: We thank you for this opportunity to appear today, and my remarks will relate to Southam's daily newspaper operations.

I welcome this opportunity to comment on the contents and effect of Bill 40, but before I get into the substance of this presentation I'd like to comment briefly on this hearing process. The news coverage I've read so far indicates that this review of Bill 40 may become a dialogue of the deaf, with those for and against the legislation so dug in to their positions that they can't hear the arguments of the other side.

The government clearly feels that business reaction to the legislation has been extreme and unthinking. The minister appears to interpret some of this opposition as attacks not just on the proposed legislation but on union members themselves.

Much of the business community, on the other hand, believes that these hearings are a sham and that the government will not make any significant changes in this legislation regardless of the quality of arguments and evidence presented. Some of my colleagues have accused me of wasting my time in appearing here today.

I am here today because I take the minister at his word that he will amend the legislation if he hears convincing arguments about where changes need to be made. I am not here to attack unions or union members. My father and grandfathers were members of railway unions throughout their working lives, and I was a member of two locals of the newspaper guild earlier in my career. I recognize that unions have done a great deal to improve the quality of working life in Ontario and in Canada.

The daily newspaper industry in Ontario is heavily unionized and, in spite of a couple of recent high-profile strikes, I think it's fair to say that relations between management and unions for the most part have been good. Our employees generally have good jobs with high pay and excellent benefits.

One of the conclusions we draw from the excellent working conditions that our employees have been able to win at the bargaining table is that the current balance of power between management and labour, in our industry at least, is about right. We are extremely concerned that the changes proposed in this legislation, particularly those that would force newspapers to stop publishing during a strike, would dramatically tip the balance in favour of unions.

This would seriously damage the health of our industry and ultimately our ability to provide the well-paid jobs that our employees now enjoy.

Southam was founded in Ontario, has its head office here in Toronto and remains committed to the province. The company's history goes back more than a century, to 1877, when William Southam acquired an interest in the Hamilton Spectator. Southam's operations include nine of the oldest and most respected daily newspapers in the province: the Brantford Expositor, the Hamilton Spectator, the Kitchener-Waterloo Record, the North Bay Nugget, the Ottawa Citizen, the Sault Star, the Owen Sound Sun Times, the Kingston Whig-Standard and the Windsor Star.

All of Southam's Ontario dailies are unionized. They have been for most of our history. In many of the communities where we operate, employment with the Southam newspaper is regarded as one of the best jobs in town. We recognize the right of our employees to organize and we have a long history and decades of experience dealing with their union representatives.

In many ways, however, it's no longer business as usual for daily newspapers. In addition to the stubborn recession of the past two years, lifestyle changes, shifts in the advertiser economy, the advent of new information-delivery technologies, frightening and unacceptable levels of illiteracy, evolving population demographics and characteristics, rising costs, weakness in attracting certain critical readership segments and other realities make the future of the newspaper business less certain than it has been in the past.

Our margins have been declining as traditional newspaper advertisers exploit the many other outlets for their promotional and marketing dollars.

Against this background, our biggest single concern with Bill 40 is the proposal to limit the use of replacement workers during a strike to existing onsite management. In most cases this would prevent newspapers from publishing during a strike, and it's not an exaggeration to state that this proposal could put some newspapers out of business.

A newspaper must publish continuously. Links with our readers and advertisers are tenuous, and experience has shown that any interruption of service can mean that we lose them not just for the duration of the strike but for ever. Today's consumers of news need not rely on the daily newspaper for current events and advertising information; they have many other Canadian and foreign options at their disposal.

News is a perishable commodity, more perishable than lettuce or tomatoes. If you don't publish it today, its useful life is over and missed; it's no longer news tomorrow. Unlike many other industries, it's impossible for us to stockpile production in anticipation of a strike or to catch up with production afterwards. A missed day of publication represents a newspaper and associated revenue that is gone for ever.

The New York Daily News, once the largest circulation daily newspaper in the United States, suffered through a disastrous strike last year and is now up for sale and on the brink of bankruptcy. While the News attempted to continue publication during the strike, violence prevented normal distribution and the vital link with customers was broken.

Before the strike the daily circulation of the News was 1.3 million copies, but when normal publication resumed after the strike, only 800,000 of those daily buyers came back. Half a million were lost for ever.

Both potential purchasers of the News, Conrad Black and Mortimer Zuckerman, are insisting that because of the paper's poor performance, unions must agree to the elimination of at least 25% of the 2,100 jobs at the paper as a condition of sale. If the paper is not sold to someone with the capacity to make significant capital investment, it will almost certainly go out of business, with the consequent loss of all of these jobs. This is another lesson for us, and it should also be to newspaper union members, that it is not in anyone's interest to force a newspaper to break contact with its customers.

In contrast, the recent strike at the Toronto Star is evidence that our current system in Ontario, under the present labour legislation, is working reasonably well.

After negotiations which clearly showed evidence of differing opinion among Star employees, since four other Star unions accepted the company's offer and agreed to three-year contracts, the Southern Ontario Newspaper Guild, representing 1,500 employees, went on strike from early June to early July.

By using managers to replace striking employees and contracting out other services, which would not be allowed under Bill 40, the Star suffered financially but continued to publish and did not break the all-important contact with its customers. Early in the strike the Star cut ad rates by 50% in an attempt to keep its advertisers. The city of Toronto and the Ontario government both pulled their ads on philosophical grounds—a total of \$48,000 a week in lost advertising.

The Star averaged 64 pages, compared with a norm of 84 at this time of year. The Star stopped delivering flyers for most of the strike and, as a result, some advertisers turned to independent, and typically non-union, companies for distribution. One major grocery chain suggested it might continue to use this approach even after a settlement.

Even the newspaper guild acknowledged that during the strike the newspaper risked a serious loss of market share. The Star's competitor, the Toronto Sun, reported that its advertising and circulation numbers were both up.

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After all this, with both sides feeling the pinch that should be part of the reality of a strike, the government mediator, Victor Pathe, said "significant compromise on both sides" resulted in an agreement. The chairman of the newspaper guild's Toronto Star unit said he was "happy with the settlement." The publisher of the Star said he was delighted both sides had reached "a fair and just settlement." If a relatively brief labour dispute imposes economic penalties on both sides, leads to compromise and results in a settlement that both management and labour are happy with, that indicates to us that the balance of power under the current labour legislation is fair and working.

The Star, which was founded 100 years ago by a group of printers striking the now long-defunct Toronto News, published and survived to welcome back its employees. A Star which could not publish continually would almost certainly have lost many of its customers and returned to

business as a smaller and less healthy newspaper able to offer fewer of these well-paid jobs.

Southam currently has a newspaper strike under way in Sault Ste Marie. By using 20 volunteer replacement workers from other Southam papers to fill in for the 65 people on strike, publication of the Sault Star has been maintained and contact with customers has not been broken. The union has attempted to organize a boycott of the paper by readers and advertisers, and Southam has incurred additional expense in the loss of services of the replacement workers at our other newspapers.

Although it's impossible to say exactly what the outcome will be, it will undoubtedly be some type of compromise and, because of the continued publication, the strikers will have jobs when they return to work. It will be more evidence that the current legislation, under which strikers can attempt to penalize a newspaper economically and the newspaper is allowed to continue publication and maintain contact with customers, is serving our industry well.

I'd like to mention one other Canadian newspaper strike that's pertinent to Bill 40. The Minister of Labour has said that any reform of the Labour Relations Act must seek to reduce the level of confrontation and antagonism in labour-management relations. Southam has undergone a strike under the Quebec legislation prohibiting replacement workers which has been a model for Bill 40. Our experience is that the level of confrontation and the degree of antagonism has never been worse.

The Gazette in Montreal was struck for seven months, from July 1987 to early in 1988. Because the Gazette believed that contact with customers could not be broken, extensive planning and very costly preparations were undertaken to permit production and distribution of the paper throughout the strike.

Ironically, the Gazette owed its existence to another newspaper strike, one which caused the closure of its competitor, the Montreal Star, then the largest English daily in Montreal. The smaller Gazette was on the verge of being closed in the late 1970s when there was a lengthy strike at the Star during which the newspaper did not publish. The result was depressingly familiar. When the Star attempted to resume publication most of its customers were gone, some to the Gazette and others away from newspapers altogether. Quebec lost an important newspaper voice and more than 1,000 workers, most of them well-paid union members, lost their jobs because contact with customers was broken. This strike took place under the same type of anti-replacement-worker limits that Bill 40 would provide in Ontario.

In light of the Montreal Star's experience, both the Gazette and its unions were acutely aware of the potential damage a strike could cause. Unions saw this increased leverage under anti-replacement-worker legislation as a means to secure a contract on their terms through the mere threat of a strike. The only alternative for the Gazette's 1987 negotiations was to take all the steps necessary to continue publishing during the work stoppage even before negotiations began. When the strike did occur, it was the most violent the Gazette had ever experienced.

Because of the expensive and extensive preparation, however, the Gazette was able to publish, survive and learn some critical lessons, including:

1. It's vital that a newspaper publish. The main asset a newspaper has is its local franchise, and news and many advertisements are perishable. If contact is broken with readers and advertisers for any sustained period, many will be lost for ever.

2. There must be a level playing field. If unions have the right to strike and attempt to penalize a newspaper economically, the newspaper must have the right to operate during a strike and preserve the base of its business.

3. In an anti-replacement-worker legislative environment, strikes are very costly, which tends to promote inflexibility and violence. The cost of the strike to the Gazette was in excess of \$1.2 million. Much of this had to be spent before negotiations even began to ensure publication if they were not successful. This heavy upfront expenditure was not conducive to a climate of flexibility and compromise at the bargaining table.

The permanent loss of a daily newspaper impoverishes a community culturally and politically. It's not in the interests of the people of Ontario that legislation be passed that could put the existence of their local daily newspapers at risk. A year ago I expressed some of these concerns in a letter to Premier Bob Rae. I wrote then:

"My prime concern is with the proposals that would in effect force newspapers to cease publication during a labour dispute. When an auto plant shuts down, the company can be confident that people will continue to use their cars and not lose the driving habit. Newspapers do not have this comfort. Our connection with many of our younger readers who were brought up with television is rather tenuous and it is easy for them to lose the newspaper-reading habit when papers are not available. Southam would go to extraordinary lengths to avoid missing even a single day of publication."

Bill 40 seems to have been designed to correct a perceived imbalance in power between management and labour. While this may be the case in some sectors of the economy, it would wreck the reasonable balance of power we now have in our industry. In the newspaper industry our employees have been able to use their existing clout to win the kind of highly paid jobs this government and the labour movement want available to all workers. I urge you not to pass legislation aimed primarily at helping poorly paid, unorganized workers that would damage the health of our business and ultimately put well-paid union and non-union jobs at risk in our industry.

We all want Ontario to continue to be a productive and rewarding place to live and work, and unions have an important role to play in this. The legislation which limits staffing during a strike to onsite management would have a devastating effect on daily newspapers and the 12,000 people they employ in Ontario. It would be a step backward for labour relations in our industry.

This legislation represents major institutional reform which would shift the current balance of power between employers and unions. In Ontario, major shifts in legislation have been made only after building a consensus

among all stakeholders. The evidence presented at these hearings so far indicates that there's no consensus whatsoever.

We urge the government to continue to respect the tradition of balance in our labour relations in Ontario. Excessive power to either party in the workforce could destroy decades of building a skilled, productive and rewarding working environment.

Mr Offer: As we read the submission, there's no question that it is just the single issue in the use of replacement workers that is before the committee in your presentation. One of the issues brought forward in this matter is that the prohibition of replacement workers would have a direct impact on incidents of violence at the picket line. Can you expand upon how to address those concerns which have been brought forward to the committee?

Mr Mills: First of all, I should say that there are other concerns with the legislation, and the newspaper industry will be making another presentation next week that'll be more broadly based. We've just chosen to focus on this one today.

There's no doubt that is a concern. When you use replacement workers, there has been violence, unquestionably, in other industries. I think in the case of the Toronto Star strike most recently there was not a great deal of violence; there was some. In Sault Ste Marie where we are using replacement workers recruited from our other newspaper, so far there really hasn't been any. Unquestionably there has been in other industries. At the Gazette, which took place under the anti-replacement worker legislation, there was far more violence than there was in either of these strikes.

I'm not sure the legislation as in effect there is going to be a key factor. If there's going to be violence, I think there would be violence anyway.

Mr McGuinty: Mr Mills, again with respect to the issue of replacement workers, the unions advanced the position that their right to shut a business down, their right to protect their jobs, should be given priority over the right of a business to continue to operate. Obviously you disagree with that, but how do we reconcile those competing rights?
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Mr Mills: I'm speaking here for our industry only and I've tried to point out some of the unique factors affecting our industry. There may be some industries that are affected less by a forced shutdown than we would be. As I've said, if you shut down a car plant, for example, people are going to keep driving their cars, wearing them out, and there's no chance they're going to give up driving and take the subway because a car plant is on strike. But in our experience in the newspaper business, newspaper-reading is a habit. People make it part of their lives when they come home from work or get up in the morning to read a newspaper, and if it's not there for an extended period of time, that's gone.

We don't just face an economic penalty in shutting down. We face the entire erosion of our business. I think there's a recognition in the legislation that some industries that are essential must continue to operate and at the other

end of the scale there may be industries that can afford to take a shutdown. We probably fall somewhere in the middle, and there may be others in our category: We really do face the loss of our business altogether, as the loss of many newspapers has shown, when we're shut down.

Mr McGuinty: Then with respect to this issue at least, you'd be satisfied if the newspaper business was added as an additional exemption to those which would not be subject to the provisions of dealing with replacement workers?

Mr Mills: I guess I'm saying that this legislation appears to me to be a broadsword dealing with a problem when maybe a scalpel is more indicated, where you need a more specific type of legislation that's intended to deal with the problems, change in the labour force and so on, that are behind this legislation, and that by swinging this broadsword around you could damage a lot of us that are not the primary focus of the need for change here.

Mr McLean: If this legislation had been in place when the Star strike was on, would the Star have been out of business today?

Mr Mills: No, I don't think the Star would be out of business. The Toronto Star is the largest newspaper in Canada and is a very strong franchise. The strike might well be going on still because all the pressure would have been on the newspaper, far more pressure than there was on the union. As I've tried to indicate, I think if you look at the result, the balance of economic penalties was roughly equal: People were out of jobs for a while but they got strike pay; the newspaper was still publishing but it was losing money. The balance was equal.

Mr McLean: But it may have been over quicker too?

Mr Mills: Yes, it might have been over quicker but the Star might have had to give in to things that would affect its long-term viability as a newspaper.

Mr McLean: Look at the effect in Montreal with the 1,000 workers who are now out of work.

Mr Mills: Yes, the Montreal Star.

Mr McLean: Could you see the same thing happening here?

Mr Mills: It's possible, if it had gone on for a long period of time. The Montreal Star strike went on for about eight months back in 1979. When it tried to come back, even though it gave away advertising free, gave away the newspaper free to subscribers, its customers had moved on, some to a competitor and some just got out of the habit altogether. Even a newspaper like the Toronto Star could be in the same jeopardy as the Montreal Star if it were prevented from publishing for a long period.

Mr McLean: Could the Toronto Star not farm out its printing and publishing somewhere else?

Mr Mills: Not under Bill 40.

Mr Carr: I had the advantage of reading a recent article, in the Report on Business maybe, that had an in-depth study that was very flattering about your company, so I feel like I know it.

My question's very simple. I'll talk about the Toronto Star strike. Some people would say that strike might not have happened because the company, whatever the demands were percentage-wise, would have given in and that strike would not have happened. Knowing the financial position—and you said long-term it would hurt Torstar—what would have happened with that specific strike had this legislation been in place? Would we have even had a strike, and, if not, what would it have done in terms of the cost? Could the Star still have survived?

Mr Mills: It's very hard to speculate and know exactly what would have happened. Certainly, if the Star were looking at a situation where it would not have been able to publish at all, would not have been able to serve its customers and its advertisers, it probably would have had to give in at the bargaining table because, as I've said, looking at the whole history of newspaper publishing, we know how dangerous it is to break contact with customers, and that's what we're concerned about.

I think the jobs, the pay, the benefits, the working conditions we provide for our workers now are very good. At our large newspapers and the Toronto Star, the key journeyman rates are \$24, \$25 an hour for most people plus all kinds of drug plans and health plans and dental plans and so on. They're very good jobs for people.

If a newspaper is in a situation where it must give in to the union demands or shut down, it has to give in. If it has to continually give in, it's going to undermine the viability of newspapers. Newspapers are facing more challenges than ever before for some of the reasons I outlined. We continue to provide excellent, well-paid jobs and be cost competitive, but we can't give in to everything the union people may want.

Ms Murdock: It's not a business I know very much about. I think your points have been made very clearly in regard to replacement workers, so I'm not going to continue in that area. I'd like to look at a different aspect, which you haven't really addressed but which is part of Bill 40, that is, the whole issue of part-time over full-time workers. In terms of having \$24 or \$25 per hour for most of the employees, I would presume that would be a full-time rate?

Mr Mills: Yes.

Ms Murdock: Do your part-time workers come under that as well?

Mr Mills: It varies from paper to paper. Some do. We have part-time workers who make full rates and others who are paid less.

Ms Murdock: Is there a difference between full-time, part-time and freelance?

Mr Mills: Freelance are independent contractors, and part-time and full-time are employees of the newspaper. I think in most of our newspapers about 80% to 85% of the working hours would be done by full-time employees who work somewhere between 35 and 40 hours a week.

Ms Murdock: Would both groups have similar benefit packages within your organization?

Mr Mills: It varies from paper to paper. Some do, some don't. The reason newspapers need part-time employees is because our volume of business varies so much during the week. The Wednesday and Saturday papers are much bigger than the Monday and Tuesday papers, for example.

Ms Murdock: Just to get back to the perishable aspect of news, my riding is Sudbury. I know it's not one of your papers, but when they had their strike a number of years ago, they closed down for six weeks and didn't publish. I presume the argument—I just want you to confirm whether that would be true or not—is that the reason the Sudbury Star has maintained its readership is because it's the only one there, or would it make a difference in terms of your target market?

Mr Mills: I believe the Sudbury Star has shut down twice, for different periods.

Ms Murdock: Yes. Once it used replacement workers and once it didn't.

Mr Mills: Yes. The circulation before those strikes at the Sudbury Star was 40,000. It's now about 28,000, while the community has grown.

Ms Murdock: I'll have to check.

Mr Mills: I think if you check that, you'll find that's accurate. So it hasn't maintained its readership. Newspapers are very vulnerable. As I've said, I'm not exaggerating. We're very vulnerable. If you don't get your newspaper delivered for two or three weeks or six weeks, when it comes time to start again, you may not want to start again. I wish it weren't true.

The Chair: Gentlemen, on behalf of the committee, I want to thank you for coming here this afternoon, for your views and your input into this process. You've obviously provided a perspective that's novel and that will be helpful to the committee. We appreciate the time and effort you've demonstrated this afternoon. Thank you kindly. Take care.

ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE

The Chair: The next participant is the Ontario Sheet Metal Workers' and Roofers' Conference. Come forward and have a seat.

I mentioned earlier the difficulty some people had getting into the building for evening sessions. The whip's office was indeed monitoring the committee, because Peter Block from the whip's office came in here promptly after I mentioned that and indicated that he can assure us there will be access for evening participants and observers through the main and east doors. That's an assurance that there'll never ever be any difficulty for anybody getting into the evening sessions here. I appreciate that from Peter Block in the whip's office.

Gentlemen, please tell us who you are, what your titles are and leave us the last 15 minutes at least of your half-hour for discussion, dialogue and exchange.

Mr Jerry Raso: Thank you, Mr Chair. We are here on behalf of the Ontario Sheet Metal Workers' and Roofers' Conference. We are a construction union of approximately 13,000 members in Ontario, basically in the industrial,

commercial and institutional sector. Mr James Moffat is the business manager of Local 30 of the conference, which is the Toronto local and the largest local in Ontario. My name is Mr Jerry Raso. I'm the legal counsel for the conference.

Before I begin our comments, I couldn't help overhearing the talk about the newspaper. During the Toronto Star strike, I cancelled my subscription, in support of the strike. I renewed my subscription immediately upon the end of the strike. A lot of people do that.

1600

We're here today to speak in support of Bill 40. We consider it an extremely important bill. The conference made submissions before the committee on the discussion paper. We'd like to thank the committee for giving us this opportunity to speak again on these important changes to the Labour Relations Act. We presented a brief. It's quite detailed and addresses many issues. Since we have such a short period of time today, we're only going to address a few important issues and leave room for some questions.

Just as a very short introduction to what we're going to say, basically we're in support of Bill 40. When the Burkett report was out and the labour representatives issued a report, they issued very far-reaching and substantial recommendations for changes. We endorse that. Then the discussion paper came out and we felt it was short of the labour representatives' recommendations. Then Bill 40 came out and it too had many omissions.

Basically, this says that this is not the Satan that is being portrayed in the press. It is very modest, necessary proposals for change. Most or virtually all of the changes in Bill 40 exist somewhere else in Canada. These are not radical changes by any means.

The first area I'd like to address is the purpose clause. We've heard it said that this will completely politicize the Ontario Labour Relations Board and force the labour relations board to take a pro-union stance. Speaking as a lawyer, one who appears before the board on a regular basis, this is simply not true. Putting in a purpose clause, as opposed to a preamble, will give direction to the board in interpreting the Labour Relations Act, but it doesn't give the labour relations board free rein to do anything it wants.

Further, this purpose clause is merely a continuation of the Labour Relations Act—what's presently in it now—and merely codifies basically what goes on before the board every day. If I can just read the present preamble, the purpose: "Whereas it is in the public interest of the province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees."

The Labour Relations Act has always existed to encourage collective bargaining. Bill 40 simply builds on this and brings the Labour Relations Act up to date. It brings it into the 1990s. It recognizes that things have changed with the workforce in Ontario in the last 40 and 50 years, that people are part-time workers, that people work in quasi-public premises such as malls and no longer work strictly in factories owned by their strict employer.

The purpose clause is much in keeping with the present Labour Relations Act. It doesn't give the labour board any new powers; it simply still has to follow the sections and the rules that exist in the act.

Another area that we feel is very important concerns organizing and certification. We are very pleased to see Bill 40 propose the elimination of petitions after the application date and the elimination of the requirement for a \$1 fee being paid to the union when you sign a membership card. These two things are completely unnecessary and do nothing more than simply create more antagonism between the parties and create undue acrimonious hard delays. We have seen petitions, and the requirement for \$1, delay certification applications by months and months.

Petitions again are unnecessary because they only exist in a small percentage of certification applications and the vast majority of them are rejected. It has been our experience in certification applications that they're merely a tactic created by management to delay the certification application or to influence employees and to force them to sign this.

I even have a quote from David Wakely, who is a very well-respected management-side labour lawyer in Toronto. He agrees with the elimination of both petitions and the requirement for a \$1 fee to be paid. Concerning petitions, he says, "I really do think that one of the reasons they want to get rid of this...is to eliminate a large amount of largely acrimonious litigation." He said the \$1 requirement has "spawned all sorts of litigation. The government's motivation here is to remove or avoid that kind of litigation, and I don't think that's a bad thing." By the way, his firm is Winkler, Filion and Wakely. So even labour lawyers on management side recognize the petitions and the \$1 requirement do only harm.

One concern we have with Bill 40 is that only petitions after the application date will be eliminated. It's our position that petitions that are submitted before the certification application date do as much harm as those introduced after, and therefore all petitions should be eliminated, both pre- and post-application; there's really no difference between the two.

Another area we support in Bill 40, under organization and certification, is expedited hearings for allegations that the employer has committed an unfair labour practice. This too is absolutely crucial for certifications.

One thing you have to remember is that we're not talking about minor infractions by employers. We're talking about serious actions that employers do to frighten, scare and intimidate their members into not joining a union, not signing a card or signing a petition. We're talking about when they threaten to lay off or discharge an employee. We're talking about when they interrogate them, when they bring them into the office and ask all sorts of questions about who is talking to the union, about who is doing what. We're talking about surveillance when we have employees followed by private investigators or management people. These are serious infractions by management.

The real effect of having an expedited hearing will be to reduce or take away the power to scare other employees. The real effect of this is that when you have someone

discharged for supporting the union and it takes literally six to 12 months and \$30,000 for that person to win his or her case and get his or her job back, the damage has been done and the employer has already won.

What happens is that you have other workers see what happened to their coworker and see that he has been unemployed for six to 12 months. Frankly, it works: It scares them. What happens is that they say: "I don't need that kind of trouble. Big deal, so I win 12 months down the road. It means I've been out of a job for a year. I don't need that kind of trouble." So what they do is either they refuse to sign a card, or if they do, they sign a petition to refute that card.

Having an expedited hearing does absolutely no damage to the employer. It merely makes sure that the effect of the delay of the hearing will not have a negative effect on the certification application. One very concrete example we have is where we tried to certify a company with 13 employees. A few employees were fired. After the application went in, management called and had several meetings. Management created a petition and got an employee to circulate it.

After all these allegations, the Sheet Metal Workers of Local 30 filed an unfair labour practice. The union won and it was found that the employer did commit all these infractions. The problem was that we didn't get a decision until two and a half years later and after spending \$35,000 in legal fees. That's what it cost the union to certify 13 people, and that's what it did to employees of that company. We certified them, but the company won an important victory in scaring people and making many people question whether it's in fact worth it to sign a union card. Expedited hearings are very necessary and they're very reasonable.

Again, this will only apply to bad employers who violate the Labour Relations Act. If you're a good employer and you don't violate the law, you have absolutely nothing to worry about.

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Another area we support with Bill 40 concerns certification, where the labour board finds an employer guilty of committing an unfair labour practice. Presently, the requirement is that the board has to find, first, that the employer committed the unfair labour practice, so the true wishes of the employees cannot be ascertained, and second, that the union demonstrates adequate support.

The real and serious problem with this is that once the employer commits A, the unfair labour practice, it will succeed in frightening and intimidating workers so that they refuse to sign cards and the union cannot demonstrate that it has adequate support. Once the employer has done A, it's virtually impossible for the union to demonstrate B. It makes no sense to have both requirements. What you basically have presently is employers being rewarded for committing unfair labour practices.

Unfortunately, in the area of organizing and certification, we're disappointed with Bill 40 in three important areas. First of all, we're disappointed with the amendment to allow access for organizers to quasi-public premises. This would basically apply to shopping malls. In construc-

tion, this will not apply to and will have no effect on our organizers. Our workers work on construction work sites. These are not quasi-public premises. The public does not have access, for safety reasons, to a construction site. This will provide no positive effects for construction workers.

It is our position that it is not unreasonable at all to allow organizers on to all employer premises, whether they are private, quasi-public or whatever, with the proviso that you can go on to only those parts of the premises where there is no work going on, where there is no production. Basically, we're talking about parking lots and cafeterias. This will provide non-union employees with an opportunity to meet and be given a leaflet from the union and it will again do absolutely no damage to employers. What we're talking about are premises and parts of the premises where work will not be interrupted.

The second area in organizing where we feel Bill 40 does not go far enough is in not granting or providing for a notice to bargain an access to employee lists from employers. We feel a better process is for unions to very openly go to an employer and say: "We want to talk to your employees. Give us an employee list." What this does is it brings the whole matter out into the open, into public.

Presently, organizing can be very clandestine. It's like it's something illegal. You have to make sure the employer doesn't find out. We feel this is improper. We feel unions have a right to go to management and say, "We'd like to have a copy of your employee list." This is not an infringement of anyone's right to privacy.

Presently, what we have—we all receive this—is junk mail and phone calls and we have no idea where these companies got our names and addresses; they bought them from some other company or some newspaper or magazine. That's not a violation of the right to privacy and certainly granting an employee list is no more an invasion of the right to privacy.

There will be no harassment. Frankly, it's not in a union's interest to continuously go after someone. The union does not have the time or the money. If it goes to a person and that person's not interested, usually the union will simply move on.

The third area is automatic certification when a union reaches 50%. We see no reason why a union has to have 55% to get automatic certification. In a democracy a simple majority should be enough to certify that union.

We support Bill 40 in the area of strikes and industrial conflict. We feel that the amendments proposed will level the playing field, provide a more equitable relationship between management and labour and most certainly reduce violence on picket lines. You only see violence on picket lines when you have scab labour and when you have a worker, a man or a woman, who's been with that company for 25 or 30 years, has given his or her life to that company, is on strike and then sees someone else taking his or her job away. Usually that other person doesn't want to get involved in picket line violence. They're usually desperate for a job. Banning certain replacement workers can only reduce that violence.

Unfortunately, in our perspective, Bill 40 doesn't do enough to ban replacement workers. It can be said that this

is an extremely onerous clause on management. There are so many exceptions to the ban on replacement work. Management and supervisors can perform the work, non-bargaining unit employees can perform the work, the company can have that work performed at another place or premise where it operates and management can contract out that bargaining unit work. It can hardly be said that this is extremely one-sided. For example, in construction the contracting-out ability can only serve to hurt unions and will serve as a big hole in this ban on replacement workers.

The other problem with replacement workers and the ban is that there's no expedited hearing when a union alleges that the employer has violated this section of the act. Just as we said you need an expedited hearing for an unfair labour practice for dismissing an individual, you need an expedited hearing in this case.

If a union alleges that a company's violating this ban, what good does it do if you go to the Ontario Labour Relations Board and you get a decision 8, 10 or 12 months down the road? The strike will probably be over by then. During that year management has been able to use replacement workers in violation of the Labour Relations Act. It may get a declaration at the end of the day that it has violated the act, but basically it's won. It can violate the act and do it with impunity because of the delay.

The third problem with the ban on replacement workers concerns a remedy. The act is basically silent on what the labour board can do if a company is found to have violated the act. One thing the Sheet Metal Workers' conference proposes is that it be put in the Labour Relations Act that the board has the power to put a penalty on management equal to the wages it has paid to the replacement workers it used in violation. Only if management is adequately deterred from doing this will it stop. If there's no adequate remedy, if there's no adequate enforcement or if there are no teeth to the legislation, then it becomes meaningless.

It's 4:20.

The Chair: You have two choices: You can either carry on or you can leave some time for dialogue.

Mr Raso: I'll just carry on for one minute on one other point.

The Chair: A lawyer's minute?

Mr Raso: A sheet metal worker's minute.

The Chair: I know whereof I speak. It's okay.

Mr Raso: The one area where there are many proposals is to streamline grievances, to streamline hearings, to make many administrative changes for both grievance arbitration panels and the Ontario Labour Relations Board. As a lawyer, I can only welcome these changes. Again, these are not radical changes; they're very modest. They simply make sure that if there's going to be a hearing the parties are going to get that hearing as quickly as possible and they're going to get a decision as quickly as possible.

You know the saying, "Justice delayed is justice denied." That's what often happens in labour relations hearings. With the examples I've given already and other cases of occupational health and safety violations, hearings and decisions can take six, eight, twelve months or two years

down the road. The taxpayers, if you go to the labour relations board, have spent an enormous amount of money, and the parties have spent an enormous amount of money and time, and often it's because of preliminary legal objections that eventually will have no bearing on the case.

1620

Bill 40 does many of these things for the act. It requires a decision to be rendered within 30 days of the hearing being concluded. It provides for settlement officers. That's very important. If the parties can settle the case before they go to the board, that's a big victory for all parties.

It increases the jurisdiction of arbitrators. That allows arbitrators to get to the bottom of a matter, to the roots and what's really at stake. If you have a grievance and you have a hearing and it gets thrown out for some legal or preliminary matter, you've still got the problem; you've still got the antagonism between the parties. Allowing arbitrators to get to what's really the problem with this grievance can only benefit everyone.

In summary, the conference fully endorses Bill 40. We feel it's important, we feel it's necessary and we feel it's quite modest. It simply brings the Labour Relations Act up into the 1990s. It reflects what's going on today and it provides a more level playing field between management and labour, and because of that it should improve and it should work towards building better relations between the parties.

The Chair: Thank you, sir. Mr McLean and then Mr Carr.

Mr McLean: The first question I have for you, sir: You are a lawyer. You salute the government for its amendments in this Bill 40 and for providing a full opportunity for full consultation. As a lawyer, can you give me the interpretation of "full consultation"?

Mr Raso: It issued a discussion paper and it had hearings before a committee for that discussion paper. It allows many parties to appear before this resources committee consisting of all three parties.

Mr McLean: A layman's opinion of "full consultation" would mean that everybody who wanted to be heard would be heard. That is what I would conclude is full consultation. There are 250 people who are going to be heard in five weeks and there are about 1,200 who want to be heard, and you say that is full consultation?

Mr Raso: In this case I do say it's full consultation. I know that in terms of the 1,200 people who want to be heard, we have 13 locals in conference. I think all 13 locals sent in a request to be heard; there are 13 locals in the provincial conference. We recognize that this matter has to go on. The 13 locals did not get standing but their views are being represented by the conference. The conference met, we went over our brief and all the parties in our union agreed that the conference would represent everyone. In terms of the requests, I have full faith in Mr Harold Brown and his staff that they will adequately—

Mr McLean: You've answered my question. Thank you.

The Chair: One moment. You wanted to praise Harold Brown and his staff. Go ahead and finish, because they deserve praise. We won't take it off your time. Go ahead.

Mr McLean: I'll do that for Harold.

Mr Raso: I'm just sure they will be able to look at all the requests and decide who would best represent and get a full representation of the province of Ontario.

The Chair: As staff you mean not only Harold Brown; you mean Todd Decker and David Augustyn, the co-op student who's been working with the clerk this summer. That's whom you're speaking of.

Mr Raso: Exactly.

The Chair: Fine. Mr Carr.

Mr Carr: And don't forget the Chairman.

With regard to the certification process, and you talked a little bit about the list, if one of the provisions were that a union is allowed to get the list of names of people, mail out bylaws, talk about previous settlements and get its side of the story to employees, for whatever period of time, so that it's confident that its side will get out, if that provision is in there where a union could get the list, would you then be prepared to say, through a secret ballot process, that the true wishes of the individuals will be heard?

We've heard a lot about how management will get involved in the process. There would be no reason, because no one would ever know. Of 150 employees, if 100 vote for a union no one would know who those 100 are. If you, as a union person, could get your message out through these lists, through mailings or whatever, would you then be prepared to have a secret ballot for certification, and if not, why not?

Mr Raso: As opposed to a certification drive that goes on now?

Mr Carr: Yes. You talked about the problem associated—and I heard you saying it was a bad process, a lot of problems with it. Would that make it a lot simpler? If not, why not?

Mr Raso: No, I don't think it would. I think our proposals, in terms of access of lists and if any infractions are committed that you have an expedited hearing—I think that's much better. I don't see it being very democratic bringing in a group of non-union employees—

Mr Carr: Labour board people to hold the vote?

Mr Raso: What you're proposing is that you'd have both sides present their views and have a vote, no?

Mr Carr: You're opposed?

Mr Raso: No, I think this way's better, because what you have right now is a union being required to prove it has a majority of that employment. You've got to have 50% or 55% and you've got a full majority of the full workplace. If you simply have a vote, you're going to have problems with who's going to have the right to vote, who's going to show up. Are you going to force all employees to vote?

Mr Carr: That's the same way with the vote for the provincial government, not that many people showed up.

Mr Raso: At least at the beginning you have the union being forced to demonstrate it has a majority of the entire workplace. If you have 20% show up, you can't force people to vote.

The Chair: That having been said, we've got to move to Mr Wood.

Mr Wood: Thank you very much for coming forward with an excellent presentation. I listened to your comments intently and I realize you're not fully satisfied with the amendments that are brought forward, but I'm sure you must agree that it's going to give some workers out there who would like to belong to a union a choice in the coming months and years.

Mr Raso: We support every amendment in Bill 40. We fully support it and we urge the government not to delete it all, to pass what's there. It's our position, though, that in certain matters we've outlined, it just doesn't go far enough. What's there is good. It will definitely help to achieve some of the government's goals of improving relations, reducing picket violence and providing a more level field between management and labour. We fully agree with that.

Mr Wood: Along the same line, realizing that the legislation hasn't been updated since 1975, almost 20 years; that the government is trying to reflect the changing environment, the changing workforce, the amount of extra part-time workers there are, more women going into the workforce, more minority groups, new Canadians coming who have no place to turn to for assistance and who would be able to turn to a union of their choice and say, "Well, I'd like to have some protection in the workforce," do you believe that is going to accomplish this, that we can further update it in another four or five years if we see more changes in the workforce and the environment and that changes can be done?

Mr Raso: Absolutely.

Mr Offer: Thank you for your presentation. I want to bring forward an issue you have raised, I think, for the first time to date in our hearings. That is around the jurisdiction of powers of the arbitrator or the arbitration board.

One of the areas you brought forward was that, as a result of the amendments to Bill 40, the arbitrator or board will now have the power to determine the nature of the differences to address their real substance. This of course excludes, in a very real sense, what is known as due process. It is in essence saying to the parties: "We don't really care how you got here before the board. We don't care what method was used. We'll decide now what is the real issue to be decided."

On the basis of a natural sort of fairness and justice, that is a power to an arbitrator or the arbitration board that just shouldn't exist and which I don't know exists in any other portion of our laws. People can come to the board and if there's an argument by one group saying, "The process has been faulty," the board can say, "We're going to put that all aside and still make our decision."

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I ask the question—I know it is very specific but I do pose it, because I heard you allude to it in your presentation—as a solicitor dealing with this matter, I'm wondering how

you feel about this change, which really does exclude the whole issue of due process for an arbitrator or board.

Mr Raso: I don't think it excludes the issue of due process by any means at all. I think what it does is allow arbitrators to go beyond any technical or legal mistakes or infractions that have occurred to date and get to the issue. He or she is not going to simply pull out of the air, "I want to deal with this issue of the company problems." There are real parameters that it has to operate within and those include, first of all, the collective agreement. Grievances only deal with violations of the collective agreement.

If a worker, not knowing the labour relations law, fills out the grievance form in a wrong way and cites the wrong clause of the collective agreement or doesn't know how to properly phrase it, that shouldn't prohibit the arbitrator from saying: "Yes, you've spent six months to get to where you are, but I'm really sorry, you didn't cross your t's and dot your i's. Therefore, go back, go home. I'm not going to hear you." That's not due process either.

Mr Offer: My question is that on a reading of the bill, it doesn't apply to dotted i's or crossed t's. It talks to an arbitrator or the board, saying to the parties, "You're here, and we, the arbitrator or board, are now going to address the real substance of the matter as we see it." I'm wondering what type of justice that is to those who are before the board.

Certainly there are procedures where some of the examples you've brought forward would be addressed earlier on. I'm talking right in the area of decision-making. I think it's an important matter and I'm glad that you've brought it forward. I certainly do want to hear your thoughts on that.

Mr Raso: It's not going to happen at the end of the road. It's not going to happen with the decision. Parties are not going to see a decision on an issue they had no idea was going to be there and had no opportunity to address. That is going to be dealt with at the beginning of the hearing. It's going to be dealt with before the merits are presented. The arbitrator's going to say: "This is the real issue. This is what really happened. This is what we're going to deal with." If it happens on day one, there's going to be an adjournment. The parties are going to go back, they're going to prepare and they're going to deal with the real substance. That benefits both sides. Why waste thousands of dollars and thousands of days for nothing?

Mr Offer: I hear your response. I wish I could share your optimism. There's no question that power is given to the arbitrator, the board, and I have some concerns as to what that means in its exercise. I must say I do appreciate your bringing this matter, because it's one which has caused me some concern and reflection since the bill has been introduced. I do believe you have been the first person to suggest this one very important area. Thank you.

The Chair: People, I want to thank you for appearing on behalf of the Ontario Sheet Metal Workers' and Roofers' Conference, for taking the time to be here and for the interest you obviously have, for very good reason, in the legislation. You represent a significant constituency and you've presented its position forcefully and articulately today. You've been of great help to the committee. I

trust you'll be following the process of the bill through the committee, and we welcome further input from you should new matters arise.

Mr Raso: Thank you, Mr Chair.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION

The Chair: The next group participating is the International Ladies' Garment Workers' Union. Come on up and sit down at a microphone. Tell us who you are and what your titles are, if any. We're eager to hear what you have to say. Try to leave us 15 minutes at the end of the half-hour for questions and dialogue.

Ms Alexandra Dagg: Okay, I'll try. I'll introduce the people with us today. I'm Alex Dagg. I'm the manager for the Ontario region of the International Ladies' Garment Workers' Union. To my right is Ms Mary Said. She's a union rep with the union who was a garment worker, a sewing machine operator in a plant. To my left is Wilfred Kronquist, who is the elected president of the region. He's a cutter and works for Dylex Ltd making dresses. To my far left is Danny Sun, also a cutter from the trade who's now an organizer with the union. Ready?

The Chair: Go ahead. Tell us what you want to tell us.

Ms Dagg: The International Ladies' Garment Workers' Union was established in Canada in 1911. We are one of the oldest local unions in the manufacturing sector. The Ontario chapter of the ILG has worked for the benefit and dignity of garment workers and has also fought for a better future for them. Approximately 85% of our membership are immigrant women, many of whom have worked in the industry for many years. Our members sew all types of garments that Canadians have worn for decades, from T-shirts and socks to \$3,000 wedding dresses. The ILG's consistent guiding principles through the last 80 years has been to fight for workers' rights and fair and equal treatment for them, and it is within this spirit that we present this brief to you today on the issue of Bill 40.

The ILG welcomes the opportunity to respond to the proposed Bill 40 amendments to the Ontario Labour Relations Act. Not only is reform of this act important for the effective monitoring and regulation of labour-management relations in this province, it's been more than 15 years since there has been any thorough review of this legislation. Workplaces have changed dramatically since this act was last reviewed and it's essential that the OLRA change with the times and adapt itself in order for it to be the regulatory body that reflects the workplaces of the 1990s in Ontario.

We will be responding in some cases specifically to Bill 40, but also more generally as to whether we believe the proposed amendments will actually mean that the OLRA will facilitate the right to organize in the province.

An additional comment we would like to make at the outset is that our experiences have indicated that when unions and workers are respected by the employers and recognized as important contributors to wealth creation there is greater productivity in those cases. We believe that Bill 40 will contribute significantly to promoting stability

within Ontario's workplaces. For these reasons, we believe this is an important bill.

We are, though, disappointed by the fact that the government has decided to only minimally address the measures that need to be taken to increase the access of women and immigrant workers to collective bargaining. The government's original discussion paper had documented the changing nature and composition of our workforce. Specifically it had pointed to the growing numbers of women and visible minorities entering the workforce. Statistics show that women lag behind men by about 10 percentage points in the rate of unionization. Ontario in particular has the lowest rate of unionization of women workers of any province in the country. The predominance of women in certain sectors of the economy like small workplaces, part-time jobs and the service and retail sector, which are for numerous reasons difficult to organize, can partially explain this lag.

The Ministry of Labour then goes on to argue that the proposed reform will aid and facilitate the right of workers to organize in particularly the non-traditional areas. They further argue that the act must be responsive to new economic developments in the Ontario economy.

While it's true that many of the proposals will help facilitate the formation of unions, they are a far cry from completely altering the labour relations environment of Ontario. They will clearly not, as some opponents have argued, mean that all Ontario workplaces automatically will become unionized. Nor will the amendments increase significantly the numbers of women and visible minorities organizing in unions. The amendments will mean less litigation time at the labour board for the bargaining units that are already organizable, and it will likely mean increased effective union organizing in sectors where viable bargaining units exist, but it will not alter fundamentally the bargaining power of small units and sectors of the economy where there is no clear employer. This is necessary to ensure effective access to collective bargaining structures. Those employees who are working in areas where there is some job security and in standard forms of jobs will gain greater access to collective bargaining, but those women concentrated in non-standard, insecure employment will not see greater access to effective collective bargaining.

Subject to our comments below, this legislation must be passed. However, if the government is truly committed to facilitating the rights of workers to organize in particularly the non-traditional areas and be responsive to new economic developments in the economy, other measures must be taken to give better protection to home workers and other workers concentrated in non-standard forms of work. The government must not be influenced too heavily by the strong scare tactics that have been used by the business community to hinder the commitment by the NDP to make some real changes to the rights of working-class people in this province.

1640

Specific options for reform: We generally support all of Bill 40 and therefore have not discussed those aspects which we support the inclusion of. This brief is specifically focused on those areas of the bill that we have found

to be inadequate and on the issues that are significant in addressing the general areas of increasing access to collective bargaining for sectors of the economy that are not typically unionized.

Bill 40 outlines a proposal to remove the exclusion of domestic workers' right to organize. Although the ILG welcomes the removal of this exclusion, we recognize that the simple removal of this is only symbolic. It does not deal with the real difficulty of achieving collective bargaining for domestic workers who are employed primarily in units of one in a single-family home. Not only are these workers women; they are also largely immigrant women and visible minority women. This is an area of the economy increasingly important as traditional families now often rely on two income earners. This is also an area employing large numbers of workers who are at the bottom of the economic ladder and are clearly in need of greater protection at the workplace that unionization could provide. It's disappointing that the government, which has been clearly on the record as advocating for greater equality for women in this province, has only taken the initial, first step in its proposal to deal with domestic workers. This is clearly not enough.

To effectively deal with the rights of domestic workers to organize a union and bargain collectively, there must be a system in place that mandates broader-based bargaining. There must be a regulation that designates all the single-unit family employers as a single employer for purposes under the Labour Relations Act. The addition of a central registry for domestic workers that would collectively bargain with the employer and then deal with individual complaints as they arise would give them real access to collective bargaining. The provision of a union hiring hall mechanism could also facilitate an alteration of bargaining power. This could operate in a similar fashion to hiring halls found in the construction industry as well as in the garment industry.

There are parallels with garment workers and domestic workers that would benefit directly from sectoral bargaining models. We will discuss the importance of sectoral bargaining further in our brief.

Structure and configuration of bargaining units—

The Chair: If I could interrupt you, this is a well-prepared brief, but I've read through it. If you want to highlight these next sections—in other words, address them—because I think we're going to get far more from you in our discussions with you. I think you've got some important things to tell us. So I'm not telling you how to do your presentation, but perhaps you could highlight the headline and basically the thrust of it so that we save 15 to 20 minutes for discussion, because this is an exhibit now. Your brief is a part of the record. Okay? Sorry to interrupt.

Ms Dagg: Okay. And you guys are going to take it home and read it, right?

Interjection: Yes.

The Chair: No, people are reading it right now. And I tell you, people are going to read it.

Ms Dagg: Okay.

Structure and configuration of bargaining units: One of the things that's really important in determining issues around the labour board is the definition and the importance of the bargaining unit. The importance of the bargaining unit is fundamental, but that gives difficulties when you don't have a clear, definable bargaining unit, and also in cases of small employers. One example we have here is that in 1985 nearly 84% of all of Ontario's registered businesses employed fewer than 10 workers. With units of this size, collective bargaining and union servicing of collective agreements is often very difficult.

The structure of the garment industry in Ontario is also in the middle of rapid restructuring away from large manufacturing plants towards a complex web of interrelated employers in a pyramid structure. I just want to talk a little bit about the structure, because that really makes our case about broader-based bargaining.

The hierarchy is structured as follows: At the top of the pyramid is a relatively small number of jobbers and manufacturers. The jobbers design garments but they rarely manufacture directly any of their garments. Even the manufacturers, who were typically the large employers in the sector, now manufacture only a small portion of their sales. The trend is towards pure jobbing and the creation of the "hollow" corporation.

These jobbers and manufacturers subcontract cutting and assembly operations to contractors. The larger contractors often subcontract work out to still smaller contractors and to home workers. At the bottom of the chain, of course, is the production of the home workers. These home workers often work for more than one contractor. So when you look at this pyramid subcontracting structure of the industry in which home workers are employed, you can certainly see how it drives home work underground. Any enforcement mechanism for minimum standards or for protection under the act must address this subcontracting structure.

The reliance within the act on the existence of a viable bargaining unit before a collective bargaining relationship can be struck means the frustration of workers in such complex subcontracting structures, because we can go and organize a small contractor, and as soon as we go and put a certificate in at the board, that contractor is shut and long gone, but he will then operate and open somewhere else under a new name. Unless you're an expert detective, they're very hard to find and to track.

The proposed reform of the configuration of bargaining units only addresses the smaller issues that unions sometimes face, but it's unable to deal with the larger question where bargaining unit descriptions as normally practised have no meaning or no relevance, as in the case of home workers.

Again, the issue of broader-based bargaining in particular sectors such as the clothing industry or for domestic workers becomes very important. We strongly propose that the minister be mandated to review sectoral bargaining models that are already in existence, examine them as to their appropriateness in certain sectors in the Ontario economy and be mandated to report back in a very short time frame so that this issue can be addressed, and then imple-

ment sectoral bargaining models so that these issues can really be addressed.

Let me turn to the striker replacement provisions. The striker replacement provisions are important proposals as well, but they do not go far enough. The failure to recommend that work must not be contracted out during a work stoppage is also a major gap in the provisions. In the clothing industry, work is routinely contracted out. All an employer has to do is bundle cut pieces of fabric or, alternatively, ship the paper patterns to any number of garment contractors that exist all over Metropolitan Toronto. This could effectively frustrate any work stoppage by employees. In our union experience, picket line violence has erupted when trucks attempt to take the work out or people try to take the bundles out to send them round to a contractor.

The failure as well to include the company's managerial and supervisory employees in the striker replacement provisions is also a major gap for us. Although the union strongly supports the introduction of this bill, there are still too many loopholes which will contribute to picket line confrontations. We urge the government to reconsider its position on this issue and close some of these loopholes.

Preservation of bargaining rights: As discussed a little earlier, we described the structure of the clothing industry. When you look at the related employer provision and sale-of-business provisions under the act, you have to understand the nature and the structure of this industry to understand the loopholes in the law from our point of view. Any sale of businesses defined under this act should also include simply a sale of assets.

We've experienced numerous difficulties in trying to preserve bargaining rights over the last few years, as an employer will routinely sell just its most important asset to another employer, which is normally the labels or the brand names it sews under. The effect of this is to escape bargaining rights, because then this new employer will own the rights to the brand name, the old manufacturer using completely different workers, and then they escape bargaining rights. This has happened to us on many occasions. There must also be improved protection for employees when employers relocate their businesses.

The simplest and most effective means of ensuring compliance with minimum standards under the Labour Relations Act that will deal with some of our problems is to impose joint liability for these standards on the businesses at the top of the pyramid. Not only do the manufacturers and jobbers in the clothing industry control the labour process, they are economically much more stable. They also set the terms which the subcontractors, who are in a very competitive position, must comply with. A liability on the top employer would help ensure that wages and working conditions would not be subject to constant downward pressure, thereby frustrating workers' access to collective bargaining structures. Again, a system of broader-based bargaining would help deal with the structure of the industry here.

In conclusion, we support many of the proposed reforms in Bill 40. They would give much-needed improvements to the Labour Relations Act. They would help us

maintain collective bargaining relationships with employers where we do have representation rights now and may increase the numbers of garment and clothing workers gaining access to collective bargaining in cases where they work in larger, more secure industrial units. But we strongly urge the government to take another look at the changes that would also significantly benefit women and immigrant workers as members of the more vulnerable workforce in different forms of precarious or substandard employment.

We just want to mention, in addition to our comments on the Labour Relations Act, the importance of looking at some of the other employment law here.

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One act I'd like to point out is the Industrial Standards Act, which regulates minimum standards in the clothing industry. This is a cooperative act where employers and unions work together to set standards. We have standards above the Employment Standards Act at this time. We have a long history of working cooperatively together to regulate this industry, but this act needs serious amendments as well because it hasn't been amended for about 30 years and doesn't really fit the industry any more. So this one needs to be done as well.

However, the lessons we have learned from the Industrial Standards Act and working cooperatively with employers to actually set standards in the industry can be useful lessons and applied to other sectors of the Ontario economy. We believe this could be an interesting pilot project for a broader-based bargaining model if it were updated to reflect the 1990s.

One last point is that the majority of women workers in the province of Ontario rely on the Employment Standards Act for protection in the workplace, not the Labour Relations Act. It's essential, then, that this act be amended as well if the Ontario government is serious about improving and expanding opportunities for women in this province.

Not only is the enforcement of this act weak, it has not, as well as the Labour Relations Act, kept up with the changing nature of the workforce in this economy. It's not the legislative vehicle it should be, so we strongly urge that the Ministry of Labour immediately undertake a serious review of the Employment Standards Act with a concrete program and an agenda of legislative proposals and consultations. Thank you for this opportunity.

Mr Fletcher: Thank you, Ms Dagg. It was a very good presentation. Earlier on in the day we had Fairweather in here, whose parent company is Dylex. They were telling us about how progressive they are. They have enhanced training programs—I have their brief here—flexible work hours for anyone who wants to work flexible hours. Retail provides the opportunity for seasonal employment, part-time work if you'd like it, or what have you, and their compensation exceeds that of the US, Quebec and other provinces. They even have an 800 number. If you have a complaint you can phone the boss—something I can't do—but it's there.

With Dylex and Fairweather being such progressive companies, do you have specifics of why you would even want to organize someone like Dylex?

Ms Dagg: It's very interesting. We've had a collective bargaining relationship with Dylex for many years. For 40 or 50 years we've been bargaining with it in its manufacturing centres. Wilfred works for Dylex and is an employee there.

One of the interesting things about Dylex is that they do employ home workers. Even though they have registered their home workers and met the minimum conditions of the Employment Standards Act, they're no angel employers. They are actually one of the companies we have the most problems with in dealing with grievances, and Wilfred and Mary can both attest to that. So it's very interesting if they're saying they're progressive employers, because that certainly hasn't been our experience with them.

The Chair: I want the people here to understand that all of them can respond to these questions, not just Ms Dagg.

Ms Murdock: We had Intercede in the other day. I know both your group and Intercede are working together, because we recognize the fact that removing the exclusion of domestic workers doesn't resolve the problem for domestic workers or garment workers, particularly in the home working situation. I know you mentioned hiring hall and broad-based bargaining. Which is your preference, or how do you see it working?

Ms Dagg: I think it has to be a combination of things. One of the things we're studying in a joint project with Intercede right now is exactly developing a model that could address and set up a broader-based bargaining model for both domestic workers and home workers. We don't have the full program at this point set out, but we do have general ideas.

We think the designation of who the employer is is really key; then if you operate with a central registry for both home workers and domestics, any employer who would like to use a home worker or a domestic worker would have to come through the central registry. That way we would know and could track exactly where they are and monitor the working conditions much more closely than we can, because most of the case with the home workers is that it's underground. We don't know where they are. A lot of them are operating in basements under illegal conditions.

A report we did found that there are numerous and repeated violations of the minimum basic laws in this province. We found, for example, one Chinese-speaking woman who was earning the equivalent of \$1 an hour on her piecework wages in her home right in the city of Toronto. There has to be a way of looking at who the employer is and making these employers who own the brand names and the labels responsible for violations of the basic law.

That's kind of the outline of what we think could be done. I think some examples in the construction industry are also useful here in terms of using union hiring hall

mechanisms for referring workers to employers when they need them.

Mr Offer: Thank you for your presentation. I guess I've had an advantage in that in an earlier meeting a number of months ago the configuration and some of the issues were explained to me. I was very much looking forward to your presentation. I think the issues you bring forward are absolutely crucial.

Notwithstanding Bill 40, is there something that should and could be done to the Employment Standards Act, in your opinion, that could in a very real way address some of the issues that confront the home garment workers in this province?

Ms Dagg: Bill 40 is important for the workers we have currently under collective agreement. We're obviously trying to maintain collective bargaining rights, so I don't want to minimize that part. That is important as well because we've been under attack by employers like never before in the past couple of years.

For home workers, there are already some provisions under the Employment Standards Act that aren't enforced. Even if you didn't change the law and you could enforce what we already have, that would immeasurably improve already what the women face now. There's a way they could improve their enforcement. By using an audit procedure rather than just a complaints-based procedure, they could do an occasional audit on certain sectors of more marginal employers.

If we could have a high-profile charge or public hearing of an employer using home workers under illegal conditions and have it be public in the papers and have this person fined \$50,000, which is there under the act, that's a cheap way of making sure the other employers are going to start to pay more attention to the law too. The little cost-benefit analysis they do internally about whether or not it pays to break the law is going to be weighed a little bit differently once you start seeing violators fined a much higher amount. That's one thing.

The second thing is to amend the act to look at who the employer is. We have cases of large employers who do millions and millions of dollars of business in this industry and they might own five or six different designer labels—your wives probably buy and wear this stuff—and what happens here is they don't manufacture anything; they send it out to all these contractors. But they're not responsible. The way they've set up their business is perfect for avoiding legal liability so that they're not actually responsible for any of the violations. If we find someone not making minimum wage, we have to go to the contractor. Once the contractor finds he's under investigation, he flies the coop and he's gone and then you're left with no vehicle.

If you could define that and impose a joint liability on the top employer, you would get a lot more just by the fact that the employer who's responsible for the work would then say, "It pays for us to make sure that the contractors we're using and their employees are making minimum standards," because otherwise they're subject to fines. It's not that big a deal.

Mr Offer: I have a small follow-up question. With regard to the areas you've just alluded to, without taking away from your concerns with respect to Bill 40 for and against, would it be in order for you, if possible, to give to the committee the position you have in the area of not only Bill 40, which we have before us, but also the Employment Standards Act, so that we could almost use this as an addendum to your concerns?

I think this is a very important issue that's coming at an extremely crucial point in time. This is the time when we really do have an opportunity to deal with it and I would like to try, if possible, to get not only the position on Bill 40, which we have here today, but also some of the areas you've already alluded to.

Ms Dagg: I believe we gave you our brief on that when I met you in December, but I can certainly make available copies to all members of the committee, because it does go into more detail. Actually, I thought the Coalition for Fair Wages and Conditions for Home Workers was scheduled to speak this morning, but there was a mixup; it'll be speaking to the committee next week some time. They will be raising these issues as well, so I can make sure they bring the brief for you.

Mr McLean: I appreciate your presentation here today. I observed the other day that the committee was dealing with nannies and domestics. We're trying to figure out how they would organize and under what conditions they would organize.

You explained the question very well to Mr Offer with regard to the home workers: It can be at arm's length about three different distances away from the original garment maker or manager of a certain company you could be working for. How many of these home workers in the city of Toronto do you estimate work for persons about two places away from their bosses? Somebody would hire them, and then maybe that person who is hired would hire two or three more and give them the work they were supposed to do; I read in the paper a week or so ago, like the person you had indicated, about \$1 an hour. Is this what's happening? The one person is making it for the company and then it in turn farms it out to somebody else.

Ms Dagg: Yes, it is something like that. It's an amazing web and pyramid. We spend a lot of time actually trying to figure out where the work is going. If we look at a designer label like Alfred Sung, for example, it takes us a long time to try to figure out where all these garments are actually being made. It's incredibly complex.

Mr McLean: It could be thousands of people?

Ms Dagg: Not so many any more here, because they actually import a lot from Hong Kong, but they still produce a substantial amount in Toronto. We're talking probably a couple of hundred workers, but they'd be spread out all over the city, so they're incredibly difficult to track.

Even though we don't know exactly how many home workers there are any more in this city—because they are underground; they're very difficult to track—very conservative estimates are that there are about 3,000. But there's only 6,500 working in the factories in the city of Toronto now, so there are at least half as many home workers as

factory workers. If we keep going in this trend, there are going to be more home workers than people working in factories.

Mr McLean: How do you organize?

Ms Dagg: It's very difficult. You need a broader-based bargaining model which designates who the employer is.

Mr Ward: Bill 40 will help.

Ms Dagg: Bill 40 helps, yes. Bill 40 will help in certain cases where an employer has many home workers. We still run into the difficulty that home workers work for more than one employer.

The Chair: Thank you, Ms Said, Ms Dagg, Mr Kronquist and Mr Sun. We thank you very much for coming here on behalf of the International Ladies' Garment Workers' Union, which has a significant and impressive history here in Ontario and throughout North America. Your comments were most valuable to the committee. We appreciate

your taking the time and we trust you'll be keeping in touch. Thank you kindly.

That wraps up this week. I want to be very clear that I'm thankful—all of us are—to the staff who have helped: Pat Girouard with Hansard; Avrum Fenson and Anne Anderson, legislative researchers; Teresa Lohan, who operates the console and makes sure peoples' mikes are turned on and off at the appropriate times; of course the people doing the translation—theirs is a particularly onerous task because, as often as not, two, three or four speakers will try to speak simultaneously; the legislative broadcast service, which has done a wonderful job, as usual; and Harold Brown, Todd Decker and David Augustyn, who is the co-op student working with Harold Brown and Todd Decker. I hope David Augustyn's parents on Port Robinson Road West in Thorold are watching this as we compliment David Augustyn for his outstanding work this week.

We're going to come back on Monday at 1:30 here at Queen's Park. Thank you kindly, people.

The committee adjourned at 1705.

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- *Fletcher, Derek (Guelph ND) for Mr Dadamo
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Legislative Assembly of Ontario

Second session, 35th Parliament

Official Report of Debates (Hansard)

Tuesday 11 August 1992

Standing committee on resources development

Labour Relations and
Employment Statute Law
Amendment Act, 1992

Assemblée législative de l'Ontario

Deuxième session, 35^e législature

Journal des débats (Hansard)

Mardi 11 août 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant des lois
en ce qui a trait aux relations
de travail et à l'emploi



Chair: Peter Kormos
Clerk pro tem: Todd Decker

Président : Peter Kormos
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 11 August 1992

The committee met at 1000 in room 151.

LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

CHAMBER OF COMMERCE OF KITCHENER-WATERLOO

The Chair (Mr Peter Kormos): It's 10 o'clock. We're ready to resume. These are public hearings into Bill 40, amendments to the Ontario Labour Relations Act. They say they are public hearings. People are entitled and indeed encouraged to come to Queen's Park during the balance of this week to watch them in person.

The first participant is the Chamber of Commerce of Kitchener-Waterloo, if the people making that submission would please seat themselves and tell us who they are, their titles, if any, and proceed with their submissions. Please try to leave the second half of the half-hour time slot for questions and dialogue.

Mr Jack Boehmer: I can start if you would like. I'm Jack Boehmer. I am a senior consultant with Peat Marwick Stevenson and Kellogg in Kitchener. My specialty is and has been labour relations, both as a consultant and as an in-house practitioner, not to be confused with outhouse practitioner.

We're here today to represent the Kitchener-Waterloo chamber of commerce. We had the opportunity back on February 14 of making a presentation in front of Mr MacKenzie and we also appreciate the opportunity of being allotted time to come here today.

The Chamber of Commerce of Kitchener-Waterloo represents over 1,500 businesses and organizations that provide employment in excess of 49,000 citizen-taxpayers with a family impact in the Kitchener-Waterloo area of over 190,000 people. This area has been very dramatically affected by the slowdown of the economy, with several major employers being forced to close down operations—many of the names you'll recognize—Seagram, Labatt's, Electro Porcelain, Greb shoe, Uniroyal, Waterloo Industries and so on. Several others are in the process of significant downsizing.

As employers, we are struggling to establish a redefined level and an approach to the economic realities as they exist in our economy today, and it's essential that governments at all levels play a responsible, cautious and positive role in this recovery process. Investment in Ontario has had a significant increase in the last decade. What must be

encouraged is a continued interest in participating in the economic growth of the private sector. Confidence in the future of Ontario as a place to invest is absolutely essential. It's only through the perceived confidence that jobs can be created and employment levels maintained and hopefully expanded.

We in Ontario, who are committed to an economic growth situation that leads to job opportunities have a problem. Ontario is being perceived as an unfriendly, unwelcome environment for new investment, and indeed for retaining historical presence. The government of Ontario is providing, through pending legislation and perceived attitude towards business, an easy logic, especially for the Americans although this extends beyond the American situation, for organizations to pull out of Ontario.

On June 4 the government introduced its bill to amend the Labour Relations Act. The bill, over 50 pages long, makes sweeping changes to the manner in which labour relations have been administered and will be administered in the province. The majority of the changes are directed to giving more power to unions at the expense of employer and employee rights.

It should be recognized that Ontario has been one of the most liberal labour regimes in North America when it comes to encouraging unionization of workplaces. However, over the years the balance, a been reached between the right of employers to operate their business profitably and the right of employees to organize into unions and represent their interests. Previous governments have managed to maintain this balance, so that the Labour Relations Act did not discourage business investment in the province and did not unduly interfere with the ability of business to adjust to the changing marketplace.

The new bill changes all that. The changes significantly alter the balance of power in favour of unions. During the months leading up to the introduction of the bill, the Ontario Chamber of Commerce and other business groups have tried to get the government to understand the consequences of proceeding with these changes. The efforts have been largely ignored by government.

Without radical adjustment to the existing proposals, it will be difficult to attract new investment to the province and difficult for businesses that are unionized, or become unionized, to operate effectively and efficiently. Less agreement between the parties in the workplace and more litigation will occur.

Concessions which the employer does not believe are in the best interests of the business will be made and productivity and profitability will suffer. It is this shift in bargaining power which is the greatest threat to the province's economy.

Mr Jim Berner: I'm Jim Berner, a chartered accountant in Kitchener, here with Jack to represent the chamber.

The bill prohibits an employer from hiring workers to replace employees on strike. It also prevents employees who don't agree with a strike from working on their own jobs. Management people or non-bargaining unit employees who work at the struck location may perform the work, but these persons have an absolute right to refuse to do the work.

In reality, very few employers could continue operating by using only the people allowed. Small businesses, in particular, will be hurt. These are the very businesses that when faced with a strike, find it most important to continue operating, because they don't have another plant or another source of supply for their customers.

Employers, contrary to what unions would have you believe, don't like strikes. A strike occurs because the employer feels that it cannot agree to the union's demands at the bargaining table. Those employers who choose to operate do so out of necessity, not out of malice.

Mr Boehmer: Under the employee rights area, the strike replacement legislation restricts the rights of employees as much as it does business rights. Currently, a union that chooses to strike an employer must have the support of its membership to go out on strike and must have the support of the membership to continue the strike.

This legislation changes all that. To gain access to the new provisions, all a union must do is have a strike vote where 60% of those voting support the strike. Typically, unions have strike votes early on in the bargaining process, before the positions of the parties have been finalized or even clarified. The union gets a strike vote as a bargaining chip.

Employees are often coerced into voting for an early strike in the bargaining process so the union can be seen during the bargaining process as having the employees' support. Under the new legislation, there is no obligation on the union to go back to the employees to ask if they wish to accept the employer's final offer.

Presently, if a union strikes, employees can continue to work if they believe the final offer of the employer is better than striking. This means the union must be sure that the employees support its decision, because they can vote with their feet. As a strike goes on, more employees may believe the costs of striking outweigh the cost of accepting the employer's last position and they may choose to go back to work.

This freedom encourages a union to be responsive to its membership and helps to minimize the length of strikes. Finally, after a six-month strike, employees lose the right to claim their jobs back at the present time. This law often forces a union to concede that the strike is not successful and brings closure to what, to many and most, would be clearly a lost cause. It also benefits the province by encouraging an end to economic action, which is impacting on the provincial economy.

Under the changes to the legislation, it is against the law for employees to go back to their own jobs until the union says the strike is over. The union has no obligation to seek a strike vote on the employer's final offer and the six-month job guarantee is extended in perpetuity.

The union can therefore blithely ignore the wishes of its members and go out on strike or continue a strike with

the full sanction of the law. Employees are now at the mercy of the union leadership.

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Mr Berner: Under employer rights, the impact on business is also significant. An employer who believes that a union's demands during negotiations are unreasonable presently has the threat that it may operate during a strike and that the employees may choose to work as levers to ensure that the union's position at the bargaining table is tempered with reality. These bargaining chips are balanced by the union's threat that the employees will support a strike and impede the employer's ability to operate. Both sides must take reasonable positions and seek compromise.

After these changes, employers will be faced with the fact that though employees on strike can get tax deductible strike pay from the union and can go out and get other jobs while on strike, the employer will not be able to operate.

The ability of companies to encourage unions to drop unreasonable positions is greatly diminished. Unions also are more likely to use the strike option since the law will provide solidarity on the picket line by prohibiting the employees from working if they choose.

Between 1978, the year the legislation was introduced in Quebec, and 1991, there have been 652 more strikes in Quebec than in Ontario. There have been more strikes in Quebec every year but two during that time. This is despite the smaller workforce in Quebec. In the period 1970 to 1977, prior to the legislation being introduced, there were 46 more strikes in Ontario than in Quebec. This suggests that the legislation encourages more strike activity by unions with the consequent loss to employers, the employees and the provincial economy.

In addition, I'd predict that more violence may occur on the picket lines as unions attempt to encourage management employees and others from exercising their right to refuse to do the work of the striking employees. Significant litigation will also occur. Unions will claim the employers are violating the act by having inappropriate people do the striking employees' work and employers will, out of necessity, violate the act. The result: more strikes, more violence and more litigation.

The experience in Quebec, the only other jurisdiction in North America with similar legislation, is also instructive. Allegations by unions that the law is being violated occurred in over 30% of the work stoppages. Over 400 employers have been fined for breaking the law. This suggests that the legislation is not practical.

Mr Boehmer: Under first-contract arbitration, there is an increased access to first-contract arbitration. Basically, either party may apply for arbitration of all the terms and conditions of a first collective agreement 30 days after the parties are in a legal strike position. Presently, it is necessary to demonstrate to the board that there exists some reason why arbitration is to be preferred to the normal process of collective bargaining. These requirements will be removed.

The prior requirements encouraged the parties to negotiate the terms of their collective agreement and to compromise to reach agreement. Often unions make promises

to employees during the organizing campaign that they cannot keep. Instead of having to negotiate a contract that is reasonable, the union will be able to simply apply to the labour board to see if it can get what it couldn't negotiate. The union no longer takes any risk in making unreasonable promises.

It is important to understand that a union doesn't have to be on strike for 30 days before it applies. It simply must be in a legal strike position. A union gets in a legal strike position by applying for conciliation and having the government conciliation officer issue what is called a "no board" report. Fourteen days later the union can strike. The CAW often does it on the first day of bargaining, before the parties even discuss the issues or, in many cases, before the issues are really tabled. This means that the union does not have to strike or even negotiate. They can simply wait 30 days and then apply for arbitration.

The purpose clause, is a real concern, I think, for me. It is predicted that the first-contract arbitration will increase dramatically, and more litigation and less agreement will result. This is even more likely given the addition of the purpose clause to the act.

For the first time, instead of simply encouraging the process of collective bargaining and letting the parties negotiate the result, the act will specify goals that are to be accomplished by collective bargaining. Some of the specified purposes of the collective bargaining included in the new purpose clause are to improve terms and conditions of employment, to enhance the extension of cooperative approaches between employers and employees and to increase employee participation in the workplace.

The preamble is used as an interpretative gloss over all the provisions of the act. Of concern is the impact of the clause on the powers and the jurisdiction of the board and arbitrators. The proposal will discourage the parties from compromising and resolving the issues themselves. This will lead to less cooperation between the parties. The beneficiaries to this proposal will be the legal profession and, of course, the ever-increasing corps of arbitrators and civil servants.

The parties are best able to define their responsibilities through free collective bargaining as expressed in the current Labour Relations Act. Should not the purpose of the act be to enhance labour peace in the province, to stimulate economic growth by promoting a progressive, stable work environment and to enhance the workplace harmony by encouraging internal resolution of problems?

Mr Berner: Combining the bargaining units: The board is also to be given the power to combine bargaining units. For example, if you have an office unit and a plant unit represented by the same union, the union will be able to ask the board to combine them. This would allow them to take everybody out on strike, thus eliminating people who might otherwise be able to act as replacements.

The union may also request that you combine unions in different geographic locations. For example, a retail store chain or a manufacturing operation with more than one location will have these locations combined into one unit so that they will bargain together and will be able to go on strike together. This further limits the ability of an

employer to maintain different terms and conditions of employment for different kinds of employees, ie, office, plant, full-time and part-time.

Contracting-in of service: While we're on the topic of different terms and conditions of employment, it is prudent to point out that the act will also now treat contracting-in of services such as cleaning, food services and security services as a sale of a business. This means that if the employer is unionized and wishes to contract with an outside agency to do this work, he will be bound by the terms of the collective agreement. If the contractor is unionized and the work is retendered, the new contractor will be bound by the collective agreement of the old contractor. This doesn't quite make sense. Required savings will obviously be harder or impossible to realize.

Mr Boehmer: What that really means is that in order to try to effect economies through the changing of inside contracting, if they're bound by the same collective agreement, that's nigh on impossible to achieve, so in effect the required efficiencies can't be achieved.

Access to collective bargaining—new groups covered: The above areas are some of the major changes which shift the balance of power in favour of unions. The other major area which the bill addresses is certification. New groups, specifically domestics and professionals, have been given the right to organize.

In addition, security guards have been given the right to join the same union that represents other employees in the workplace. This will inevitably create conflicts of interest and could leave the employer without security during a strike. In fact, the company could not hire an outside security company because that would violate the strike replacement provisions.

The present act recognizes the nature of the work and the obvious conflicts of interest that exist between security people and other employees. This concern over divided loyalties can be addressed by not modifying the current act as it pertains to security guards or by permitting security guards to join only a union not present at the employer's site.

Access to private premises: Union organizers will now have the right to enter private premises to which the public normally has access. While organizing is only to go on at the entrances and exits to the employees' workplace, "workplace" is not defined. While one can see how it might apply in a shopping mall, it is more difficult to understand how it might apply to, say, municipal offices.

Picketing is also to be permitted in such places. For example, if a department store had a franchised hair salon within its store, presumably a union that represented the hair salon employees could picket right inside the department store.

No petitions: Employees who do not wish to have a union represent them will be precluded from raising objections to unionization after the application date. This means there will no longer be a means whereby employees who were not aware of union organizing or who did not understand the impact of signing a card or who have simply changed their minds can indicate their objection to unionization. Even consumers are protected by the Consumer

Protection Act for 48 hours after purchasing something from a door-to-door salesman.

In all cases where 55% of employees have signed cards, the labour board certifies without a vote. As a result, in the vast majority of cases, employees will not have a chance to freely debate the pros and cons of unionization and make informed decisions. The idea of allowing objections at the certification hearing was to ensure a fair opportunity for all employees to participate. This will be significantly curtailed by the changes.

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Other changes to the act on certification are also significant. The board is to be given the power to combine a newly certified unit with an existing unit. This would mean that the newly unionized employees will be swept into the collective agreement of the existing unit and will immediately be covered by the terms of that agreement. The employer will have no opportunity to negotiate or maintain differences between the groups. Significant control over its operations will be lost. In this same vein, unions will have the power to insist that part-time and full-time employees be included in one bargaining unit, ending the long-standing recognition that these groups often have different interests and have always been treated separately by the labour board.

A further alteration is somewhat startling. Presently, when an employer commits a serious violation of the act such that the labour board determines that the true wishes of employees cannot be ascertained, the labour board can certify the union even though the union cannot show 50% membership support. However, the board must be satisfied that adequate membership support exists for collective bargaining purposes. This latter requirement is being eliminated. Essentially this means employees' rights to select a union of their choice will be compromised. Employees are being punished for the wrongdoings of their employer.

In summary, no study has been undertaken to indicate that proposed changes will effect positive change in the labour relations climate in the province of Ontario. The government's internal report entitled *Assessing the Economic Impact of Labour Relations Act Reform Options*, Ontario Ministry of Labour, November 1991, and the commissioned report by Noah Meltz both indicate further study is required to assess the economic impact of the proposed changes.

A cautious, informed approach is essential. Concern for economic recovery should receive priority over election commitments to any minority interest group. Now is not the time to consider changes in the Labour Relations Act.

It was not our intent to comment in voluminous detail on all the proposed changes that relate to the problems but to concentrate on what we feel would be the major issues as we see them. Thank you very much.

The Chair: Thank you. Mr Offer, one and a half minutes.

Mr Steven Offer (Mississauga North): Thank you very much for your presentation. In the area of organizing as well as other areas you've spoken about some of the difficulties with the bill. I'm wondering if you can share

with us your thoughts in the area of organizing on a secret ballot vote whereby workers would first be given information as to an organizing drive taking place, what it means to them to be able to cast their vote for or against at their place of employ and what your opinion is of that suggestion brought forward to this committee.

Mr Boehmer: While we didn't mention it in this submission, we did dwell on it in the report to the minister back a few months ago. We feel that a secret vote concept is one that would ensure that the democratic process would be adhered to. Especially now with the restrictions that are being considered, it makes it all the more important for people to be informed as to what the content of the process is and also to be able to vote in a secret ballot, and thereby the democratic process. I think that's very important.

Mrs Dianne Cunningham (London North): Thank you for being here today. I've been asked to tell you that Elizabeth Witmer has had a death in the family, so I'm here representing her, but you are in her riding and she would like to have been here.

I guess the key question today, given the position you've put to us and the many questions that I think have to be fully debated—and this is not a committee where we'd get an opportunity to debate these questions—is whether you would be in agreement with a tripartite type of committee to look at the many issues you have raised. Obviously there's not the opportunity to ask you the questions I would like to ask you, and obviously, from the questions that are going on, I think people are backed into corners here and many are not looking for solutions.

Mr Boehmer: Can I just make a comment on that, Mr Chairman? It has been suggested, I think, by several other groups making presentations here that it go back to study and that there be an all-party committee, even to the point of being expanded to include other interest groups. I guess I go back to the Burkett study.

Mrs Cunningham: Yes.

Mr Boehmer: The intent there was to come up with a unified report, and I think we all know what happened. If further study is required and if indeed a committee is set up representing various interests and certainly the various parties in the House, any report that comes out must be by consensus; otherwise it'll end up like the Kevin Burkett report did, which is really quite meaningless.

Mrs Cunningham: In that regard, this committee in the last year has operated, I think, in that way. It may be interesting to see what kind of conclusion this particular group of individuals comes to. I can honestly say that we've certainly had other pending legislation before us and we have somehow been able to come to some sensible conclusion. There may be some hope. I don't know. It's not unusual, but there may be. That's why I'm asking the question.

Your observation on further study, which has to do with the fact that there have been no impact studies done by the government, was only one aspect of my questioning, and the other one was because of your experience in your own community where you seem to be able to come to some conclusions at the chamber, sometimes when people disagree

somewhat significantly over issues. You might have had something to offer here. That was an interesting one, a three-party committee looking at the issues one by one and solving them.

The other thing I'd like to say is thanks for the statistics you put in here. We were greeted yesterday with a couple of briefs—

The Chair: Your point is well made, Ms Cunningham. Mr Ferguson.

Mr Will Ferguson (Kitchener): I want to thank both of you for taking the time to come down this morning. I just have two questions, but before I get to my questions, I want to advise you that I'm sure you recognize that strike data can be measured in a variety of ways. You've chosen one unit of measurement and that's the actual work stoppages. I want to share with you some other information and that's the actual number of days lost prior to the legislation being put in place in Quebec: 2.4 million days were lost over a 10-year period as opposed to 1.9 million after the legislation prohibiting replacement workers was put into place. There are about seven or eight different methods of measurement.

In your brief, you've made two very blanket statements. You stated that, "Employees are often coerced into voting for a strike early in bargaining so that the union can be seen during the bargaining process as having the employees' support." You also stated that often unions make promises to employees during an organizing campaign that they cannot keep. Can you share with the committee perhaps some local examples of where that might have happened?

Mr Boehmer: Speaking to the first point you made about the strike vote taken early on in the process, that happens frequently.

Mr Ferguson: What you said here is that employees are often coerced into voting for a strike early in the bargaining process. What types of coercion have you witnessed? I think it would be important to share that with the committee.

Mr Boehmer: As an in-house practitioner, it's fairly evident that the peer pressure that's exerted by the organized core group within, say, an industrial setting, but this would apply to any setting, does influence a lot of pressure for adherence to the direction that the committee wants to go. This happens in all kinds of subtle and not-too-subtle ways on the floor, and if you've been exposed to it, you know it's happening.

That's natural. In any group there is a core group, and every group does exert a degree of pressure on other elements within the membership. If anybody here has been a member of an organization—I'm sure it happens within the political realm as well. To give you a specific element as it happened to this person and that person in that kind of setting, I'm not prepared to do that at this point, but having practised in the scene, I'm certainly well aware of it.

The Chair: Thank you, gentlemen, and the Chamber of Commerce of Kitchener-Waterloo, for taking the time to be here this morning and presenting your views on this matter. I trust you'll be following the progress of this bill. We appreciate your being here.

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BOARD OF TRADE OF METROPOLITAN TORONTO

The Chair: The next participant is the Board of Trade of Metropolitan Toronto, if they would please come forward, seat themselves, tell us who they are and what their titles are, if any, tell us what they will and try to save at least the last 15 minutes for questions and exchanges and dialogue. Please go ahead with your presentation.

Mr Tim Sargeant: My name is Tim Sargeant. I'm a lawyer with Shibley Righton. With me are Jim Noonan, a lawyer with McCarthy Tetrault; Dave Crisp, who is vice-president of human resources for the Bay; and Diane Barsoski, vice-president of human resources at the Globe and Mail.

We have decided not to give you a written brief on this matter, as it's some 45 pages long, and to do justice to all the concerns we have would not be possible. I think you've heard a lot of them anyway.

The board of trade, along with other employer groups, is opposed to the wide-sweeping effect of the proposals in Bill 40. We genuinely feel it will hurt investment in this province. Of course, along with other employers, we feel most of the proposals will not have the benefit the government is claiming; namely, less confrontational relationships, and on the other hand, increased productivity. What we all agree upon—government, employers, union and non-organized employees—is that it is a very difficult economic time for Ontario. These proposals will not help, in our view.

We should say that even if the economy were prosperous, we think these proposals are ill-advised. The government's own paper recognizes that corporate profits have decreased enormously. In its paper Ontario Economic Outlook, it is stated that another limiting factor in early return to healthy business investment is a record 63% decline in corporate profits since 1989. The paper also recognizes that total real business investment in Ontario fell an estimated 6.9% in 1991; further, that plant construction is not expected to surpass its 1989 peak during this forecast horizon, held back by high vacancy rates in commercial property and restructuring in the head office and financial services industry.

Again, in 1992, Ontario's real trade surplus is expected to decline further to only \$4.3 billion as import growth outpaces export growth. We all know that bankruptcies and unemployment rates have all increased significantly. Further, it's estimated by some that unlike the recession in the early 1980s, when 75% of the jobs lost returned, this time 75% of the jobs may be permanently lost.

Given the government's own recognition of an economy in trouble, it is inconceivable how such a major reform to working relationships, one which has major economic implications, could be proposed without meaningful dialogue.

The process of presenting briefs that we have gone through in the last year we find basically inadequate, as no meaningful dialogue arose from those legitimate concerns. Here we are again in a brief 15-minute presentation on a

proposed act we view with grave concern. There's no way. It has been held easy to label employers' concerns as "scaremongering." I think that is just unfair. We frankly resent the implication that somehow a business is a bad employer if it is not unionized and that government and unions are the only structures that protect employer-employee interests.

We obviously have concerns with many aspects of this act, and we will speak to a few of them. They are not in priority. I will ask my friends on my right and left to state some of those matters we are concerned with, but this is only a brief and we are concerned with the whole output. We really are amazed that a government that alleges collective bargaining as the cornerstone has proposed legislation that deeply affects the parties' ability to bargain collectively.

Finally, just as an introduction, we would note, given that this is a major reform package, that as far as we know, there is not one major proposal suggested by employers. Labour legislation supposedly is meant to be evenhanded. This surely is not.

Jim, you wanted to speak to a specific issue.

Mr James Noonan: I just want to address one issue, I hope fairly briefly, and that's the question I think was raised by Mr Offer in a question to the previous delegation having to do with automatic votes on certifications. Personally, I sort of take it as a barometer of what the intentions of this government are and whether its purported objective in this legislation is bona fide. Is this "labour reform" or nothing more than a political payoff to its union constituency?

I speak, as I say, about automatic votes on all certifications. It has been proposed by any number of employer groups. The question I always ask is, "Why not?" and indeed have asked that of ministry officials. The only answer we've gotten back from anybody in the government or anybody in the trade union movement is this shibboleth of improper employer influence on employees who might vote on an automatic certification to see whether they want a union or not.

With the greatest of respect for a government that purports to represent the interests of the working people of this province, that's a pretty paternalistic—and I use the word advisedly—attitude towards people's intelligence and knowledge in this province, to say they cannot exercise the right to vote in a proper way. That issue, for any of you who have anything to do with labour relations at all, of alleged improper employer influence was put to bed with Radio Shack back in the late 1970s.

Any time it's raised its ugly head since then, the labour relations board has had absolutely no hesitation in putting it to bed again. It's just a non-issue. It's an agenda this government and its trade union backers seem to have that's 20 years out of date. This new procedure on certification simply addresses issues that no longer exist in the labour relations community of this province. It's either abysmal ignorance on the part of this government or cynical opportunism of the worst kind, ladies and gentlemen, in my submission, for this government to refuse to address that concern of employers.

It works in Nova Scotia. It works with the National Labor Relations Board in the United States. Nobody from the employer community is suggesting that there be any period of time for propaganda or anything else. Get the issue out of the way once and for all.

As I said, the government's failure in this draft legislation to address that issue I read, quite frankly, as a barometer of its bona fides on whether it's talking about legitimate labour reform in this province. I am sick and tired, quite frankly, of being labelled as some kind of fearmonger because I am out there speaking against this legislation. That's a simplistic and improper way of characterizing the debate that's going on in this province.

I've practised labour law for 20 years in this province. I'm not some sort of union basher or union buster, but the government has simply failed to address the legitimate concerns in reform of this legislation on both sides of the table. I've nothing more to say.

Ms Diane Barsoski: One of the objects of Bill 40 is to prevent companies from operating during a strike. The fact is that it will be very difficult for some companies and impossible for others to operate. Larger operations, with more management and non-union personnel, will have a less difficult time operating during strikes than small businesses. This means some large businesses and many small businesses will either close during a strike or give in to unaffordable union demands. It's that simple. Either way, we will see closures in the result.

The simple question is, is this an appropriate economic strategy for Ontario? If the true concern is violence, we could consider enforcing the law. Cities which enforce the law, not surprisingly, experience less violence on the picket line.

Questions have been raised about the proposed requirement to have a 60% strike vote before the replacement provisions operate. The question is, isn't this requirement sufficient protection?

1. Currently, the vote requirement is 60% of those voting and there could be even less than 50% voting.

2. The vote is not by secret ballot: inappropriate and emotionally charged macho environment.

3. Frequently the vote is, in effect, a vote of confidence in the bargaining team far in advance of the strike, and that's a fact.

The question then becomes, how about a secret ballot vote, near the deadline, on the employer's last offer and with the requirement of a majority of those in the bargaining unit? The implication of this is that if a true majority of employees want to strike, then it's somehow acceptable to potentially cause the business to close, with the attendant effects on other union employees, management and non-union employees. Same question: Is this an appropriate strategy for Ontario?

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Another issue is, how could allowing non-union employees, employees in other bargaining units and managers to refuse to perform the work of striking employees not encourage the striking union to try to influence, intimidate and coerce those employees into not performing the work?

Giving them an experience of violence could be quite effective in that regard, and there are examples of that.

How does this promote less violence and harmonious labour relations? Currently, there is no time limit after which the replacement worker prohibitions cease. Given that replacements for managers and non-union employees hired after notice to bargain has been given cannot then perform bargaining unit work, it seems only a matter of time when no company could continue to operate and the union must win simply as a result of attrition.

Finally, the bill will allow bargaining units to be amalgamated more or less at the request of the union, certainly without consulting the wishes of employees. I've made this point previously, but to reiterate, in my case, one bargaining unit, editorial, has more employees than the currently separate four other bargaining units combined. Amalgamation would mean that one group of employees, namely editorial, could vote for a strike even if every advertising, maintenance and circulation employee disagreed. That would also prevent those others from working.

Business is not overreacting in its concerns. Ontario's growing reputation as a province hostile to business and the rights of individuals is being quite legitimately earned day by day.

Mr David Crisp: I'll be very brief. One of the reasons we're all here is to indicate the breadth of businesses involved in the board of trade and how unified business is across the board in its approach. One of the issues the board is concerned about is the power of arbitrators. I won't go through all the remarks on this that you've heard, but I'll give you two examples.

As a trained counsellor myself and having worked with people who abuse alcohol over a number of years and with alcoholic counsellors, we've learned that as a key last-ditch effort to help some of those people, and I emphasize the word "help," it's often the last hold that you have to make it very clear to those individuals that they will lose their jobs if they do not seek and accept help. It has been a practice for parties in collective bargaining to agree that in those kinds of situations where the union and management work together to assist somebody, they would have the power to make an agreement that termination would be automatic and unreviewable by an arbitrator if this person does not attend the programs designated and cease drinking.

Under the current legislation, that's possible. Under Bill 40, if it were in place, that would not be possible because you're not allowed to make such an agreement taking that power of decision about termination away from the arbitrator. Therefore, one of the only routes to enforcing assistance on someone who desperately needs it, even after the parties have agreed that's the best route, is gone, and that's a very practical example of a power of an arbitrator that should not exist.

I'll take a second example from Quebec, where in a recent employment standards arbitration, the arbitrator stated in the response to the situation that he agreed that the woman we terminated had been stealing from us in an organized way, involving her family members to do so, but he felt that termination was too severe a penalty and put

her back to work in a situation in which we could not prevent that type of fraud from recurring.

We appealed that and eventually the arbitrator's award was overturned in the Supreme Court, but it took us an enormous amount of money and time to achieve that result and it took the individual an enormous amount of money and time to end up with that answer that should have been relatively obvious at the outset.

Under Bill 40, that kind of scenario involves interim orders and powers of arbitrators to put people back to work. That individual would have been back in our employ, with that type of arbitrator, for the duration of whatever period it took us to get to the Supreme Court; it could be two or three years.

I've got lots of other examples, including examples I could give on the previous presentation's question of coercion during strike votes and so on. I won't go into those now, but I'm available for questions.

The Chair: Thank you. Mr Jackson, four minutes. Leave some time for Ms Cunningham.

Mr Cameron Jackson (Burlington South): In that case, I'll make just a brief observation. Both Mr Crisp and Ms Barsoski have extensive experience in teachers' collective bargaining, and it's unfair for anybody to suggest every time some organized group comes forward to express concerns about this bill that it should or could be stylized as being the narrow interests of business. These are people, at least the two individuals I have identified who are before us, who have extensive background and understanding. I personally have gone toe to toe with Ms Barsoski at the labour board and tested arbitrators' scope and it is not a pleasant experience; it is a protracted experience.

We should listen to the deputants, because their warnings are legitimate: We're protracting the processes of collective bargaining in this province; we're not compressing them and making them more fair and equitable. We're going to add to the conflict, especially by extending the powers of the arbitrators.

That was just a comment. I hope the committee listens to this panel's deputation carefully.

Mr Sargeant: Can I make one comment on that? Jim and I have both been in practice for 20 years. If anybody really legitimately thinks these arbitration processes are going to expedite matters, he is absolutely nuts. Jim and I are going to do well off these proposals.

Mrs Cunningham: I want to offer a correction. Previously, Mr Ferguson started playing with numbers. We'll thank Ms Barsoski for the data she provided us with yesterday, which we checked out. Clearly, if anything, things are worse in Quebec in every category, whether we talk about the number of conflicts, workers affected, number of days lost or, the one that was in question yesterday, the average duration. Clearly, we've had it analysed. The only data you had was for two years before 1978; we put 1978 in that category. We aren't able to get the same data for 1970 to 1975; we've tried. So I just wanted you to know. Thank you very much.

It's unfortunate, though, that these kinds of statistics have been manipulated improperly. They're definitely incorrect

in the briefs we're reading; people out there really think the Quebec legislation is helpful when it comes to replacement workers and other aspects.

I don't know why when people come before this committee they don't suggest to this committee that everybody should be voting. I have no idea why in a workplace, when your job is at stake, you wouldn't first of all want to vote and be encouraged to vote, in fact by secret ballot, if you're concerned. I think we're all being too kind and none of us is representing workers out there by suggesting that people shouldn't have the opportunity to vote. When you say the majority of workers ought to be able to vote in this act, I say everybody should be voting in the act, and I wonder why everybody's being so kind. Is it because you want a sawoff with this bunch? We represent the public here, and workers. Why doesn't everybody get to vote?

Mr Noonan: If anybody is going to be affected and represented by a trade union, surely the very least entitlement he should have is a secret ballot vote to decide whether he wants that trade union to represent him, protected by all of the provisions of the Labour Relations Act from malicious conduct by the trade union and the employer. The board has done that. The board's done it for 15 years. Again, for this government not to include—and that's just an example—that kind of proposal for automatic certification votes, boy, you wonder why the employer community is jaundiced and sceptical about the bona fides of this piece of legislation. You need only go to examples like that.

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Mr Bob Huget (Sarnia): Thank you for the presentation. It's nice to see at least two of you again today. You mentioned at the start of your presentation this morning that as far as you're concerned the process of submitting briefs and discussions doesn't work. I wonder if you're aware that at least six of your major concerns have been addressed since your briefings were presented to the minister.

Mrs Cunningham: Whoop-de-do. Look what's left.

Ms Barsoski: It would be our interpretation—I'm sure we're free to list them—that there've been some changes. Having said that, we would also say that there have been some things added which give us great trouble as well. So in our view we don't see much change.

Mr Noonan: That is simply a nonsensical question.

Mr Huget: Thank you.

Mr Noonan: With all respect, the report that originally came out from the labour side of the Burkett committee was absurd. When you take away 60% or 20% of absurdity and leave only 80%, are you supposed to get some credit for that?

Mr Huget: This is a much different document altogether than the Burkett report. There have been 10 major changes in direct response to business concerns.

Mr Noonan: There's an old adage—

Mr Huget: I was trying to ascertain why you felt you weren't listened to when in fact at least six of the issues you raised during your submissions have been addressed, modified or dropped. I wanted some clarification on the

process not being effective, recognizing that I don't think anyone in life gets 100% of what he wants.

In terms of some of the allegations that are made around coercion of workers joining a union, you make the comment that the government is being paternalistic, absurd and now nonsensical. I find some of the comments around the allegations of coercion to be a little paternalistic, a little nonsensical and a little absurd.

I would like from you some examples of where that takes place. I have belonged to a union. I've worked in organizing campaigns. I've been organized myself and I have absolutely never in my life had any experience that resembles coercion, nor have I dealt with people who do not understand fully what it means to organize as a union worker. I'm a little confused by some of these allegations and if you could help clarify that for me, I'd appreciate it.

Mr Sargeant: Let me start, in the first place, on the 55% rule. You will find very few employees realize when they sign a card that it can be for automatic certification. You must know that as an organizer, because we have certainly found that in many cases.

Second, there are numerous cases in the OLRB where there has been coercion. As we've pointed out, there's been coercion by employers and coercion by unions. There's all kinds of recorded cases of those kinds of cases.

We're not advocating that the employer be given even those kinds of opportunities, but you say that if you have a free vote—the board can set up a free vote almost automatically where there would be no opportunities for those kinds of things. It's a very difficult thing to explain to most employees, when the green card goes up, that by signing a card you have actually committed to a union.

Now you put a proposal in that you can't even petition against that unless you do it before the application goes up, which is obviously meaningless, because before the application goes up nobody knows anyway. Now you've got a system where even if a person legitimately changes his mind because he's informed that 55% will vote, he can't change his mind. I think that really smacks of paternalism. If you don't, you and I have an argument.

Mr Noonan: Just one quick point: What you're missing, with respect, in terms of the overall labour relations picture is that you still get, under our current system, employers believing that the employees really don't want a trade union. That carries over into bargaining, it carries over into the positions the parties take in bargaining. It's bad for the system.

Under the new proposal, that's going to get exacerbated. If you put an automatic vote into place, whether an employer likes a trade union or not becomes irrelevant. It's very hard for that employer to suggest that the trade union, if there's been an automatic vote, doesn't legitimately represent those employees. What you do is get a flow-through into the whole system that improves labour relations bargaining and conduct between the parties.

Mr Offer: Thank you for your presentation. Just as an opening comment, I think you should be aware that there are people who are coming before the committee with concerns about the legislation which would not fall within the business sector. We're hearing concerns, for instance, from

children's aid societies, municipal hydro services, a variety of people who have concerns with certain aspects of the legislation; that in fact makes the point you brought forward to the committee.

I am pleased, really, that you've spoken about the power of the arbitrator and arbitration board. It's a matter which I've brought forward, and I have some real concerns about this because there are aspects of this legislation which allow the arbitrator to determine the real substance of the issue. To me this seems to be a strike against a due process which everyone somewhat takes as a given, and certainly I have some concerns in that area as well as with the scope and breadth of their authority.

But my question is not on that. It is on the issue which you have brought forward first, which I think you indicated was as a result of my first question to the first deputies, and that is the vote. The simple question is, what's the trigger? What percentage is it that triggers the vote? Are you suggesting, with your argument in favour of a vote, that the percentage remain at 40%, or are you suggesting that maybe that trigger point be reduced?

Mr Noonan: My response to that is that 50% seems reasonable, but I would expect most employers, to get that vote, would go as low as 40%. Let's let the employees decide. I think there should be evidence, and fair evidence, of a certain percentage of support rather than just a flyer. But in terms of numbers, why not 40%, which is what is proposed under the new legislation? I personally have no problems with that.

Mr Offer: I wanted to just ask that question. I thank you for your presentation. It's unfortunate that we're not able to deal with some other areas of concern with the legislation.

The Chair: The committee wants to thank the Board of Trade of Metropolitan Toronto for coming here this morning, presenting its views and participating in this process. I trust that you'll be keeping in touch.

REPORTER EMPLOYEE ACTION COMMITTEE

The Chair: The next group is REACT, Reporter Employee Action Committee. Please seat yourselves, tell us who you are and what your status is with the committee. Try to save at least the last 15 minutes for exchanges and dialogue. Go ahead.

Mr Dirk Koehler: My name is Dirk Koehler and I'm here on behalf of REACT, which is an association of employees at the Cambridge Reporter.

On February 14, 1992, we made an oral presentation to the Minister of Labour in Kitchener. Our presentation was struck from the record by the minister. The minister apparently did not want to record any worker opposition to his discussion paper. I trust that this presentation this morning will not be struck from the record. If you can give me such assurance now, I will then proceed.

The Chair: Go ahead.

Mr Koehler: REACT represents a majority of the employees in a bargaining unit where the Southern Ontario Newspaper Guild has been the certified agent since April 1989. The union has not concluded a collective agreement

in over three years, and our lives and livelihoods have been disrupted by this union. Through much of the hardship and abuse that we have endured by reason of our choice to not be represented by a union, we have joined together now with the sole purpose of decertifying the union.

1100

I'm here today to show you why we feel that some of the provisions in Bill 40 are totally unacceptable, inappropriate and ill-conceived. The sole purpose of these provisions seems to be to serve the interests of unions and not working people in Ontario. Therefore, this is an agenda for unions, not people.

Certain of these provisions such as the replacement worker restrictions even infringe upon our right to attend to our regular and honest work.

But first I would like to share with you our recent experience with this trade union and the trade union supporters.

In April 1989 the newspaper guild was certified to represent the full-time employees of the Cambridge Reporter in advertising, editorial, business office and circulation departments with about 55 full-time employees. It was later discovered that the guild needed three attempts to certify and that it used suspicious and unsavoury tactics to do so, a less than admirable basis from which to develop a trusting and mutually beneficial relationship.

If I might borrow from the current Labour Relations Act, I'll describe to you what the guild did. The guild induced employees of the Cambridge Reporter to sign union cards by making false representations to them knowingly, recklessly and without belief in the truth of these representations. In short, we believe the guild committed fraud.

They did this when they obtained several signatures on company time and property, they told employees that their salaries would double, they told people there would be no risk involved and that there would never be a strike, they told some workers that the only way to get certain information was to join the union, and several more workers were purposefully neglected because the union identified them incorrectly as company spies or management toadies.

I was one of these workers. I was later called a scab by the same union that pretends to represent me. I was called this because I chose not to join the union and to instead perform my regular and honest work. I will not and never will be ashamed of performing an honest day's work for an honest day's pay.

They accomplished certification by spreading lies and by withholding information that would allow workers to make an informed and educated decision on union membership.

To this date 10 employees who joined the union have come forward to raise their concerns about the manner in which the union conducted the organizing drive. There is no way of knowing how many more employees were deceived, misinformed or ill-informed.

This situation could have easily been overcome by a free vote in an open campaign between the union and its opponents at the time of certification.

On October 17, 1991, nearly two years after certification, the guild asked employees for a strike mandate by

conducting a strike vote. This, again, was contrary to their promises at the time of organizing. The vote was not fairly conducted. Some union members who were not present were allowed to vote by phone in favour of the strike mandate. Other employees who were not members and who were not present, including myself, and who had stated by legal proxy their opposition to a strike, were denied the opportunity to a vote.

Forty-three votes were counted; 38 employees from the paper were present. If this took place in a Third World country, it might be regarded as normal. This type of ballot-box stuffing is not acceptable in the rest of Canada, so why would it be acceptable in Ontario labour relations? In how many other cases does this go unreported? We need a government-supervised vote at times of certification and strike.

Our contention is that the union did not have an honest majority in favour of a strike. If the legislation had required a supervised secret ballot vote, then the union would never have received a strike mandate.

However, on November 8, 1991, 27 union members, approximately 55% of the bargaining unit and only 25% of all employees at the paper, began a strike. Another 23 employees in the bargaining unit chose not to strike and to cross the picket line to perform their regular duties.

Time today does not allow for me to begin to describe to you the atrocities, the violence, the vandalism, the terrorism and the denial of the right to peace and security of personal property that took place all in the name of industrial peace and harmonious relations, but I will attempt it.

During the strike, those of us who continued to perform our regular duties were continually harassed, threatened and assaulted, and our cars and homes were vandalized and we were called scabs.

Personally, I've had four flat tires, two during the strike and two following the strike. One night three strikers came to my home at 2 am and urinated on my back door. In addition to this, my wife and I received many unflattering phone calls at all hours of the day and night. I was shoved around, intimidated and assaulted several times. I hope you get the picture.

Unfortunately, many innocent bystanders were also subjected to the union-initiated violence and vandalism, and on one occasion my wife even received a flat tire courtesy of the guild. One striking union member later told me that he was coached on how to flatten tires, vandalize and create a nuisance by top union officials. I found it extremely distasteful that our own local MPP would sympathize with these common vandals.

What is in Bill 40 to protect regular, honest workers, innocent bystanders and the public from this sort of violence, vandalism and civil disobedience? Picket line activity does not justify violence, vandalism and civil disobedience, never has and never will.

We were not scabs or replacement workers. We had a fundamental right to go to work. Yet we were painted by the union as scab labourers. Why does Bill 40 seek to restrict my right to attend to my regular duties?

During all of this, the union filed and won first-contract arbitration. The order for arbitration was issued in April; we still do not have an agreement. It is my understanding

that our opportunity to decertify the union, which has been the author of our discomfort these last months and years, is being delayed by the lack of an agreement. The minimum term of this first agreement will be two years, so decertification will take place six years after certification, and I'll bet the union claims that it needs more time to establish a relationship, when in fact what it needs is honesty and ethics from the outset. The legislation must require that unions be honest and ethical at all times and not just in the eyes of union sympathizers.

After the strike ended in March of this year we all breathed a collective sigh of relief. We thought that maybe things could go back to normal and that maybe now we could bring out the truth and decertify the union; this was not the case. Tension was everywhere. The union continues to this day to abuse us. The picket line violence and attitude had moved from the street to the office.

On April 8, 1992, out of sheer frustration, 30 employees of the Cambridge Reporter—an honest majority—staged a sit-in. We refused to work. We asked to speak to our guild representative. She refused to talk to us. However, she did find time to talk to the local media, where she dismissed our actions as "nothing more than a collective temper tantrum." After several stressful hours and dozens of phone calls to local media, we were finally recognized by the union. They agreed to meet with a small delegation from our group.

Two days later we met. We asked for a representation vote by secret ballot. The union flatly rejected this. We then raised our concerns about the integrity of the certification documentation and about the unlawful strike vote. They denied any wrongdoing and suggested only the passage of time would heal the wounds. It is unfortunate that the wounds were inflicted by the union in the first place, and that the union would not now accept responsibility for the harm and damage caused. They said, "Give us two years, and things will improve." As I've noted above, it's going to take a lot longer than that, so this was yet another union lie. The picket line violence and attitude which has moved from the street to the office continues to this day.

On March 20, 1992, we filed a decertification application with the labour board. The labour board rejected our application not once but twice, the first time on a technicality and the second time by a two-one decision and without even hearing our evidence. We believe that the labour board was afraid that the truth would cause the union to be decertified.

The bottom line here is that we have a growing majority of people who don't like or want this union. But we don't even have a first contract yet, so here we are today, three years later, certified under fraudulent conditions, harassed and abused for going to work, ignored and denied justice by a government body and with the prospect of at least two more years of harassment and abuse by a fraudulent, self-serving organization which is outnumbered two to one.

It is from our experiences that we have formulated the following recommendations. Bill 40 makes it easier to certify a union, so where is the counterbalance here to make the opportunity to decertify clear and well defined?

Decertification should be made easier and made timely, one year after certification. If the union has the support of the employees, it has no risk in a free vote. If they have been fair and honest, they'll have nothing to worry about.

Bill 40 does not increase the union's accountability in representing employee interests. This must be remedied.

1110

Subsections 73.1(1) through (4), dealing with replacement worker restrictions, say that if a majority of 60% vote to strike, "The employer shall not use the services of an employee in the bargaining unit..." In our experience, the union only needs to stuff the ballot box with a few more phone calls. We do not, and never will, trust the union to conduct a fair and honest vote. This must be remedied.

The replacement worker restriction should not restrict any employee in the bargaining unit. If it is my responsibility to attend to my regular duties and provide an honest day's work for an honest day's pay, why does a decision that I do not agree with make my regular work illegal? My right to work is being taken away to support another person's decision to not work. Not only is this unjust but it begs for an explanation. Why is the right to strike more important than the right to work? How does not working keep the economy going?

Don't restrict me. Control the process, not the outcome. If I don't go to work and if I don't have my regular income, who's going to pay for my regular obligations and meet my basic needs? I'll go on record this morning as saying that I will be going to work without regard for Bill 40.

Certification, strike votes, ratification votes and access to first-contract arbitration must be by secret ballot, free of any allegation of coercion or intimidation. They should be well publicized and monitored by an independent party. Any sign of non-compliance with these provisions should automatically be remedied by a subsequent vote. Once again, if the union is honest and fair, it'll have nothing to worry about.

Tougher laws must be enacted to eliminate picket line and union-sponsored violence and vandalism. Termination of employment is a reasonable response to acts of violence and vandalism. Only persons employed by the company at the time of a strike should be allowed to demonstrate on a picket line. Unions should not be allowed to hire professional goons and bullies whose sole intention is to assault people, vandalize cars and homes and create a nuisance. Non-employees should not be allowed to picket.

It should be made easier for employees to go before the labour board without representation from a trade union or a lawyer. The board should not take the attitude that all employees need or want a trade union. It should not overlook the needs of employees for any reason simply because they don't have the legal knowhow to twist the labour law to work for them. The rights and wishes of employees should always outweigh the interests of the union.

In certification, a union should be restricted to one attempt in a 24-month period. It should not be permitted to drag the process out or make several attempts until it finally happens to receive 51%.

The certification process should be more open and democratic, thereby enabling all employees to make an

informed and educated decision. Bill 40 seems to promote certification as a covert activity rather than an open process. Covert activity does not create harmonious relations.

In first-contract arbitration where support of the union is questioned by employees, those employees who question the union support should be allowed separate representation in the case of arbitration. In our case at the Cambridge Reporter, over half the employees do not support the union. We do not believe our interests are fairly represented by an organization which has sought to terrorize us over the course of a strike.

As I have presented to you this morning, we have endured much hardship and abuse as a result of choosing not to be represented by a union, and we are faced with at least two more years of this. We are concerned that our rights will be lost to the union, not because it is right but because it refuses to acknowledge the legitimacy of our choice. Bill 40 in its present form will provide us with absolutely no relief and may even create further obstacles.

Today we have an opportunity to make some meaningful and progressive changes which will increase fairness and equality in the workplaces, changes which assure the individual of the right to choose and the right to work. These changes will go a long way to assuring that other workers in Ontario might not have to endure the hardship and abuse we have faced for exercising our fundamental right to freedom of association.

Earlier, I asked you for your assurance that this presentation not be struck from the record. I will now ask that you demonstrate your commitment to your obligations as elected officials responsible to the workers of this province by accepting and recommending for implementation these recommendations.

Ms Sharon Murdock (Sudbury): Thank you very much for coming. I just want to go back to your February 14 submission in the consultation period. Just for my information, I'd like to know if you had applied to make an appearance before the committee.

Mr Koehler: We made a phone call and we spoke to someone from the minister's office. That person told us that all the time slots were taken and that the only way to get a time slot was to change with another company, so that's exactly what we did. We feel that we didn't do anything wrong and, quite frankly, we're still baffled at why our presentation was struck from the record.

Mr Jackson: You were set up.

Mr Koehler: Basically yes.

Mrs Cunningham: They didn't—

Ms Murdock: If you don't mind, I think it's my time. You can use your time.

The Chair: One moment, please. I am indifferent as to whether two or three or four people talk at the same time. However, the people who translate the proceedings and the people who have to transcribe this for Hansard are very concerned about two or three or four people talking at the same time, and out of fairness to them, if not out of fairness to each other, people should please not talk simultaneously. Wait until the other person is finished. Go ahead, Ms Murdock.

Ms Murdock: The general policy, and I'm sure it must have been said on the day you were there, was that there were no substitutions because of the numbers that wanted to appear.

Mr Koehler: That's not what we were told, though.

Ms Murdock: I am just wondering, though, to go to some of the statements that you have made, how exactly, in terms of a vote, would you see it working?

Mr Koehler: In which case?

Ms Murdock: On a certification vote.

Mr Koehler: Once the signatures have been obtained, why not just have a vote by secret ballot, monitored by an independent party to make sure that the whole process is fair. That's all we're asking.

Ms Murdock: Would you then, in order to make sure that the process is fair, have lists of the workers supplied to the union organizers so that they would have contact in order to get the—

Mr Koehler: Exactly. In our case—

Ms Murdock: Are you saying yes? I'm sorry, I didn't hear you.

Mr Koehler: A list of what, all the employees who are in the bargaining unit?

Ms Murdock: In order to get the cards signed. Would you agree to that as being fair?

Mr Koehler: I'm sorry, I don't follow what you're saying.

Ms Murdock: The whole point of the secret ballot vote, which has been stated a number of times, is, on the whole, an attitude of fairness and of having everybody informed in making a decision. In order to do that, you're still asking the union organizers to go and get cards signed up to whatever percentage, which no one has any basic agreement on. What I'm saying is, in order to be fair then, would you also agree that it would be fair that the union organizers would have their names and addresses supplied to them by the company in order that they would have fair access to the workers, equivalent to at least that of the employer?

Mr Koehler: I've never given it much thought. I don't know.

Ms Murdock: You must have. You've spent a lot of time on this and I would think that you should have.

Mr Koehler: I'm not sure I understand what you're saying. Are you saying that the union supporters should get lists of all the employees at the paper or—

Ms Murdock: The union organizer, the one who is trying to, in order to get the cards signed—

Mr Koehler: In our case, they just came right into the company, on to the property and had cards signed right there and then. I really don't think it would make a difference anyway—

Ms Murdock: In your particular instance?

Mr Koehler: Yes. That's all I can speak of really. That's the only experience I have.

Ms Murdock: Just on a final point: Obviously you spent a lot of time thinking about unions and anti-unions, whichever the case may be.

Mr Koehler: I've been forced to actually.

Ms Murdock: Would you not agree that, historically certainly, the unions have been of benefit throughout this country, let alone this province?

Mr Koehler: Sure. I don't deny that there are situations where a union is needed and where it would be beneficial. In our case it certainly isn't. It's caused us a lot of headaches.

Ms Murdock: And this legislation, you do recognize, would have to cover the entire province, as it has done for the last 40 years, the amendments to the Labour Relations Act?

Mr Koehler: These are basic amendments that I—

Ms Murdock: It can't deal with specific kinds of situations like that.

The Chair: Thank you, Ms Murdock.

Mr Koehler: All we're asking for is fairness in this process.

1120

Mr Offer: Thank you very much for your presentation. I am sure that the writing of this presentation, as it involved a matter which was very personal to yourself, was not very easy to do. None the less, I think you should be aware that the experience which you have had is, I think, important for the committee to be aware of as we deliberate this bill.

I listened very closely to the question between Ms Murdock and yourself because it was really on the area that I was going to ask a question on, and I will ask the question. To me, it's not a matter as to whether one is better than the other—that in essence, one workplace, whether it is unionized or not, is better than the other—but rather whether the workers within that place have freedom to make that choice. I don't know if it's really up to us in this room to decide which is better. It is really up to the workers in the workplace, on their experience, to make that decision.

My question to you is, is that the essence of your concern, that there should be a freedom of the worker, for him or for her to make that decision in his or her opinion?

Mr Koehler: Yes, if I can be short with that.

Mr Offer: That answers my question.

Mr Koehler: I think the process just has to be cleaned up. Everything that I've put forward this morning is just dealing with being honest and fair, and if unions have a problem with that, then so be it, but what's wrong with being honest and fair?

Mr Offer: That answers my question, thank you.

Mr Jackson: Dirk, thank you for what is obviously a difficult brief to present. When one reads it or listens to your presentation, one gets a sense that you've been badly abused by a system. I want to ask you personally, how do you feel about a government that seems to be blind to these kinds of concerns? You're a worker, you're an

individual in society, yet your concerns are not being listened to. In fact we've heard deputations from the government side that your stories are, quite literally, fabrications. How do you feel about that, that a government just refuses to even listen to these concerns?

Mr Koehler: A lot of people who belong to REACT, including myself, feel that it's like we don't expect anything more from this government because it hasn't listened to us from the beginning. On top of that, they're putting forth legislation that's going to make it harder for us to continue to go to work and to not be abused. So we can have no option here but to feel distrust, I guess, dismay and just basic frustration.

Mr Jackson: In your presentation you describe atrocities, violence, vandalism, terrorism, denial of your right to peaceful enjoyment of your home and property. How do you feel about a government, Bob Rae's NDP government, literally condoning this form of violence with legislation which in fact promotes it even further?

Mr Koehler: I, like probably the rest of the workers in Ontario, don't feel too good about it.

Mr Jackson: It's interesting that you support the secret ballot.

Mr Koehler: Sure.

Mr Jackson: And we had a presentation—

Ms Murdock: On a point of order, Mr Chairman: There has never been any indication that Bob Rae and his NDP government have ever condoned such behaviour, and I want it clearly—

Mr Koehler: Why isn't it in Bill 40?

Ms Murdock: There has never been, and I take exception to Mr Jackson's comments.

The Chair: Thank you. Mr Jackson.

Mr Jackson: I would for the record, though, remind you that on at least one occasion the Premier stood in the House on the case of an incident with a member of his caucus being incarcerated and said that under certain circumstances it was okay to break the law. So the Premier is on record as condoning breaking the law under certain circumstances of conviction, and frankly, as socialists, there's no stronger conviction than the right of workers to organize. In the incidents that you've shared with this committee, those incidents can form violent behaviour, harassment or physical abuse, and that's been well documented.

The point I was raising before I was interrupted by Mrs Murdock was this notion of democracy and the several principles that underlie it. A secret ballot is one of them. When Leo Gerard was before us, he indicated that first of all a secret ballot is a very narrow view of democracy. How do you, as a citizen, feel when Bob Rae and his government would warp the principles of democracy for you as a worker in the process to certify, or your free right to decide not to certify, when you're denied the basic civil liberty of a secret ballot for your own personal protection to avoid your being identified, branded as a scab, urinated on and violated and so on and so forth, which has been your experience?

Mr Koehler: I guess it makes us feel better that here we have an opportunity to make some good changes. It seems to me that the government is going the other way. How can we not feel frustrated here? Nobody wants to go through the abuse or suffer the abuse we've had to go through, and the only reason I'm here today is so that hopefully more workers in Ontario aren't going to have to go through with it. If Bill 40 is passed in its current form it's going to happen, and then it's going to have more serious ramifications down the line.

Mr Jackson: It's interesting that you're still unresolved and that the ministry seems not to be in a position to help resolve the impasse that's occurred at your workplace. It would be interesting for this committee to find out how this legislation will overlay or impact on the current difficulties experienced at the Cambridge Reporter. I am at a loss to understand that, but I think it would be interesting if we could share with the deputant, if there is somebody here from the ministry who could indicate, if this legislation is implemented, what impact that will have on the current impasse in the current requests to decertify. Is there anybody here from the ministry who can respond to that?

Mr Koehler: I think I can speak on that.

The Chair: Ministry people will be here down the road when this committee meets in Toronto in its fifth week.

Mr Jackson: It's unfortunate that the minister, Mr Mackenzie, has seen fit not to provide this committee with representation from the Ministry of Labour so that we can have answers to questions. I find that extraordinary and unusual for a chairman of a committee. Normally we have someone from the ministry at our disposal to respond to those questions.

Mr Koehler: I'd like to make a quick comment.

The Chair: Do you want to respond to that?

Mr Koehler: Yes, I do.

The Chair: Go ahead. Respond to it.

Mr Koehler: In two years, when we go to decertify—if it's two years; it'll probably be three or four or who knows how long it's going to take—and we have a ratification vote or a representation vote or whatever—I don't even know what the process is—who is to say that the union's not going to stuff the ballot boxes again? I mean, we have this union outnumbered two to one right now and our contention is that we did right from the outset.

The Chair: Thank you. Mr Ferguson, quickly.

Mr Ferguson: I just have one question. This all started back in 1989—is that correct? Right—and you're dealing under the present legislation. I note in your brief of seven pages that you spent about five pages outlining the severe shortcomings of the present legislation. Isn't that correct?

Mr Koehler: Well, a lot of them were caused by dishonesty—

Mr Ferguson: Yes, and all that.

Mr Koehler: —and bad faith on the part of the union.

Mr Ferguson: You say then that the present legislation has some severe shortcomings.

Mr Koehler: Yes. I think it's only obvious.

The Chair: Mr Koehler, the committee thanks you for being here this afternoon and appreciates your taking the time to present your views. Thank you, sir.

1130

ONTARIO PUBLIC SCHOOL BOARDS'
ASSOCIATION

METROPOLITAN TORONTO SCHOOL BOARD

The Chair: The next participant is the Ontario Public School Boards' Association, if they'd please come forward, seat themselves in front of a microphone, give us their names and tell us their titles. We have half an hour. People, please try to save the second half of that half-hour for exchanges and dialogue and questions. Please be seated and commence with your submission. Your written brief is being distributed, and all members of the committee, I am confident, will read it. Go ahead.

Mr Bruce Stewart: Members, this brief is now being presented by the Ontario Public School Boards' Association and the Metropolitan Toronto School Board. I will turn over to Paula Dunning, who is the president of the Ontario Public School Boards' Association.

The Chair: And the other person with you?

Ms Mae Waese: I'm Mae Waese and I'm chair of the Metro Toronto School Board.

Ms Paula Dunning: I'd just like to begin with a few introductory comments. As you've just been told, my name is Paula Dunning and I'm president of OPSBA, representing our 93 member boards this morning.

We're joining with the Metropolitan Toronto School Board for this presentation as our views and concerns about the legislation before you are similar.

In addition to Mae Waese and Bruce Stewart, who are here with me at the front table, we have with us Rod Budd, who's the chief negotiator for the Metropolitan Toronto board and the area boards of Metropolitan Toronto; Mike Benson, who's the executive director of OPSBA, and Janet Beer, who's the director of labour relations for OPSBA. They may be called upon later on if you have questions that we think they can best answer.

We have, as an association, some serious concerns about the practical impact of Bill 40, particularly with respect to the replacement worker proposals. While Mr Stewart will be dealing with the technical aspects of those concerns, I'd like to briefly put them in context for you.

The current fiscal climate in Canada has put unprecedented pressures on all levels of government, but nowhere more than at the local school board level. The provincial share of education funding has continued to shrink during the recession, following a trend which we had been experiencing for more than a decade.

As a result, school boards across the province are faced with particularly difficult budgeting challenges. Despite deep and painful cuts during the budget process in 1992, most school boards found their expenses increasing by about 5½% this year, within a percentage point of the rate

of inflation but well in excess of the 1% increase in unconditional provincial grants. As you well know, local taxpayers are in no condition or mood to pay more, yet the burden of this funding dilemma has fallen on their shoulders.

Since 85% of school board operating expenses are salaries and benefits, fiscal conditions have placed the collective bargaining process under considerable pressure. In addition, Ontario's school boards have become increasingly complex structures. Each board typically has six or more bargaining units. This means that in any bargaining year, there are six potential contracts and six possible disagreements.

Our problem with Bill 40 is the potential of a strike action in one bargaining unit to jeopardize the continued operations of the board in its ability to serve students. This is a problem we share with other employers in multi-union environments, and it is exacerbated by the current fiscal climate which may contribute to greater than average difficulty in reaching settlements. It's of particular concern as well to the education sector at a time when public expectation of consistent, uninterrupted, quality program delivery is growing.

In general, our concerns with Bill 40 centre on our conviction that many of its provisions, far from promoting harmony in labour relations, will create an atmosphere of increased confrontation. Mr Stewart will outline our specific concerns with the replacement worker portion of the bill, but first Mae is going to speak on behalf of the Metro Toronto board and the seven operating boards in Metropolitan Toronto.

Ms Waese: I am very pleased to have the opportunity to address the committee and to present our views and express our concerns regarding the legislation.

Unlike other boards that are members of OPSBA, the Metro Toronto School Board and the seven operating area boards in Metropolitan Toronto do not receive operating funds from the provincial government; or as it is more euphemistically stated, we are in a negative grant position and receive absolutely no funding.

The seven operating boards and the Metro Toronto School Board educate 278,000 pupils in this Metropolitan area, approximately one quarter of the pupils in the province. To do this, we employ about 32,000 persons, including approximately 13,000 employees covered by the Labour Relations Act.

As you know, our teaching employees, with some exceptions, are covered by the School Boards and Teachers Collective Negotiations Act, normally referred to as Bill 100. At the present time, approximately 90% of our employees in the eight boards are unionized, with 45 bargaining units covering about 30,000 employees. As an illustration of the complexity of bargaining, one board, the Toronto board, has 17 bargaining units. In Metro our bargaining is further complicated by the fact that funds are raised at the Metro level and shared equitably among the operating boards. Because of this method of financing, the Metropolitan Toronto School Board endeavours to coordinate bargaining by the seven area boards among the unions covered by the Labour Relations Act.

As you know, the teaching negotiations are centralized in a committee of the Metro boards under the Municipality

of Metropolitan Toronto Act. The boards have supported the introduction of legislation by this and previous governments in the fields of pay equity, employment equity and human rights. For example, the boards have committed in excess of \$25 million per annum to the implementation of pay equity.

We approach this proposed legislation in the same spirit. We are not here to oppose advances in social justice. At this stage of the legislative process, we are of the view that our efforts rather should be devoted to improving or fine-tuning Bill 40. With this in mind, our comments are not to criticize the government for the bill's introduction but rather to identify practical problems with the legislation, particularly those aspects governing the replacement worker and the way in which these restrictions on replacement workers would impact on our schools and students.

I also would now turn the balance of the presentation over to our legal counsel, Mr Stewart, to address these specific concerns which the Metropolitan Toronto School Board and the area boards of education in Metro Toronto have with the legislation.

Mr Stewart: Thank you very much, Mae. Members, good morning. I've got good news for you; I'm not going to read the brief. But when you want to read the brief at some future time, the parts I'm going to deal with now are summarized on pages 4 and 5 and further elucidated at pages 8 to 18.

What we want to deal with is the replacement worker provisions. As Mae has just said, we're not concerned here with attacking the principles of the legislation. For a few moments with us this morning, we'd like you to visualize how this is going to impact.

The important fact to realize first of all, as is set out at pages 8 and 9 of our brief—I'd ask you particularly to look at page 9; this is in the Metro school board brief—the bargaining units in the average school board are very complex. For example, we have, generally speaking, about six teacher bargaining units, which normally break down into about two units for purposes of bargaining, elementary and secondary. In addition, in most school boards we have anywhere from four up to—I hope it's the extreme with the Toronto board—17 bargaining units. Obviously if anyone has had experience with labour relations, and I'm sure many of you have, you know there are serious problems, when you have that many bargaining units, if one of them goes on strike, and the impact on others.

I think one of the difficulties with this legislation is that it was framed with a view of the average industrial plant. I can understand that. I make no criticism of that point, because there, normally, you have a single plant unit and sometimes an office clerical unit. That's usually the sum and substance of it, so the bargaining, shall we say, is confined at the most to two or maybe three bargaining units.

But as we set out on page 9, we often have in Ontario a separate unit for clerical staff, a separate unit for custodial staff, a separate unit for teachers' aides, a separate unit for professional people—these wouldn't be teachers; these would be social workers, attendance counsellors, that type of person—and then sometimes we have a separate unit for bus drivers, for example.

What I would like to do with you this morning is to take you through what I hope is not an extreme case and what I also hope never occurs. But I'd like you to just think for a moment and come with me as we experience a bus drivers' strike in Niagara South.

There's a bus driver strike of the Niagara South board. Those bus drivers in that board are represented by a separate union, and they go on strike. They go on strike because they want more than the 1% the other unions for other units accepted. They want to catch up. It's a new idea; you may have heard it before.

Our problem is, how do we get the pupils to school, because in Niagara South, probably 75%—I don't know this is a fact, but in your own experience in other boards, probably 75%—of the pupils are bused to schools. There's a strike. We have all those teachers waiting to teach, all those custodians waiting to custode etc. They're all waiting to do the things they're paid for, but we've got to get the kids to the schools.

There aren't enough supervisors to drive the buses, and of course it could only be the supervisors employed under this proposed legislation, employed at the actual location where the buses are kept or where they're working in the school system. So recognizing the problems, we have 20 teachers volunteering to drive those buses; we have also 15 parents volunteering to drive those buses and 15 CUPE members volunteering to drive those buses, because they'd like to make sure people keep working, the custodians, maintenance people etc.

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They find out, unfortunately, that they can't do that because under the proposed legislation other employees can't drive the buses. There's just an absolute prohibition. They can't even go out and get chauffeurs to drive the buses or contract with a busing company to do it. They can't get parent volunteers to drive the buses. On one interpretation of the legislation, I think it would be fair to say that the school board could not organize parent pools to chauffeur the pupils because that would be seen as getting volunteers to in fact do the work of the bargaining unit.

Each of those situations I've described to you is unlawful under the proposed legislation. You can imagine the impact on the local community. They will be so enraged—they'll probably be initially enraged at the local school boards, who will quickly divert their attention to where the rage should be directed, which would be to this piece of legislation, that they are helpless to do anything about it.

We recognize, coming before you, that it's part of our adversarial system of bargaining that, if you have a strike, things stop. We have no trouble with that. Notice I have not suggested for a moment—in terms of the teachers going on strike I don't think there's ever been a school board in Ontario that's attempted to operate.

We understand the non-operation. What we are concerned with is the multiplicity of units and the impact if any one of those goes on strike. What we are putting forward for your consideration is the suggestion—I've set it out at the bottom of page 12 of the school board brief and it appears in OPSBA's brief the same way—that without gutting this legislation or this proposal, you could put in a

condition that the prohibition as to the use of replacement workers would not operate where it impacted on the closing of a school or schools.

There's another aspect of this, too, that I think is being ignored. Quite apart from the impact on the pupils, there's the impact on all those other workers because, in the situation I described—and believe me, it is not unusual, the type of bargaining unit structure I mentioned—5% of the striking employees could cause a school board, ultimately, to have to lay off the other 95% of the workers while the terms of the resolution were worked out.

It's this multiplicity of units where I think this replacement worker legislation, with respect, needs some attention. There has to be some sort of reason on this point. There has to be a point where the spirit of the legislation, if it's the will of the Legislature that people shan't work while there's a strike, is maintained. At the same time, where the ramifications of that are so horrible, so unnecessary—that is, that all the people will have to be laid off, that schools aren't functioning—we come to you not in a spirit, which I have seen in the newspapers recently, of adversity and antagonism but really to say: "Do you want this to occur? Is this your intention?"

We suggest that amendments should be considered along the lines we put at the bottom of page 12 of our brief. Indeed, you could have an amendment to the replacement worker provision which—there are already some exceptions in there covering danger to life, safety and health which could be extended to schools and, if that's asking too much, to the provision of public education. We hope you'll give that some consideration.

There are some other points in the replacement worker legislation we'd like to comment on briefly. This appears at page 13 of the Metro school board brief. The way the legislation is currently drafted, only management personnel who are employed at the actual struck location can perform the work of the striking employees. Now, in a multilocation public employer like a municipality or a school board, that doesn't work very well.

Here in Metropolitan Toronto we have thousands in schools, easily. That would mean the manager at that location. What does that mean, the principal and vice-principal? Can you imagine them running the heating systems? Unless they've changed since the last time I looked, I can't imagine that happening. So there is the possibility of casual shut-downs occurring through perhaps an unnecessarily restrictive ability to respond. Again we say, why wouldn't you allow managers employed in all the school board to perform this work if it is going to be so narrowly construed?

Similarly, we have a particular problem. We go into this on pages 13 and 14. We have, in Ontario—and you know the word—supply teachers. They're the people you used to have fun with when they came in when the teachers were away. They're called occasional teachers. For some strange reason, which doesn't concern us now, they are covered by the Labour Relations Act, not Bill 100. It's a strange situation. However, under the legislation, if the occasional teachers, who are represented by trade unions, go on strike then we have a class with an occasional teacher not there and we have regular classroom teachers

who, under most collective agreements, may be asked, in the absence of an occasional, to fill in. We can't do that under this legislation.

Interjection: That isn't right.

Mr Stewart: It isn't right. That's a correct statement. It isn't right and that's what we're saying. That is the job. Under our collective agreements with regular classroom teachers, they have agreed that if we can't get an occasional teacher for whatever reason, they will do that work. So there again we say, is that really necessary? Are the ends of the legislation so special that even that situation can't be addressed? We would draw that to your attention.

On page 16, point 4 is one that I think should cause you some concern. The way the legislation is drafted now, let's say you had this bus driver union again, 75 bus drivers in a school board with 1,000 employees. Let's assume the strike could be lawful and the workers have voted more than 60% to strike. The union, however, is making progress at the bargaining table—it's been heard of—and decides to defer the strike—not an usual situation. They're going to try to bargain some more, and four or five members of the union don't like that initiative. They go on strike. Okay, they can do it; it's lawful, the strike's lawful. The unions can do it, please believe me. As a result, the other members under this legislation cannot work. Ask the Ministry of Labour in due course. That is the result of this legislation.

We think that's unnecessary and we're suggesting here that at least the same 60% who are required to vote for a strike should be on strike before this prohibition comes into effect.

On page 17, I have a point I'll mention briefly and that's the question of volunteers. Our schools are full of volunteers. They're doing all sorts of things. As far as I'm aware, the teacher unions and other unions aren't concerned. They see that as an assistance aligned with the communities. We would ask that volunteers be permitted, so far as the school boards are concerned, during strikes, to continue with their functions, whatever they are, without interference with this prohibition.

Finally, the specified replacement worker, as it's called under the legislation, pages 17 and 18 of our brief: We would ask that the legislation should state that the school boards have the right to use specified replacement workers or the right to retain contractors if the people who have agreed to be specified replacement workers don't agree subsequently to continue to work.

There are other matters we could address in the legislation. We have them in our brief, but I think I heard the chairman say that you were all required to read our briefs, so I'll take that as a given.

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Interjection: He quizzes us every evening.

Mr Stewart: Yes, I can imagine. Unless there are other comments from the associates with me, Mae or Paula, those are our submissions.

Ms Dunning: No, I think you've covered that pretty well.

Mr Offer: I'll be very brief. Thank you for the presentation. I think the presentation itself puts to rest the

assertion that those who have concerns with this legislation are only from the business community. I am hopeful that members of the government have listened very carefully to the concerns you've brought forward.

I want to deal with two areas, one of which you dealt with exhaustively, and that was the issue of replacement workers. It seems to me that if, for instance, in a school system the bus drivers go on strike, which may very well be their right, under this legislation there would be no opportunity, whether by prohibition or by exemption, for the school system to attempt to replace those bus drivers. In school systems where a vast majority of kids are transported, it in essence closes down the system. I would like to get a verification of that.

Second, I would like to find out what happens even for those children who are taken to school by their parents or whatever. How are they picked up? What happens at the end of the day?

Third, there's a provision in this bill which would allow picketing and organizing on private property. I know you have a concern with that and I think we would all be wise to listen to the concerns you have with respect to this issue.

Mr Stewart: To answer your question, Mr Offer, yes, in our reading of this legislation there's just no question that a board could not lawfully, directly or indirectly, continue to assist in the transportation of pupils in any manner whatsoever. The legislation has been drawn to close off all possible options, in my view and in the view of other persons with whom I've consulted.

To the second question about the picking up of pupils, obviously it's not going to operate any better in the afternoon than it did in the morning, so I'm afraid we're in the same position.

To your third question, we have addressed the question of access on page 26 of our brief. It's a concern we have with the legislation. We don't know that the legislation intended that picketers and organizers be able to move in schools. Well, I can say it more positively. We know what the government was concerned with, and understandably: quasi-public property like shopping malls and places like the Eaton Centre.

What we are concerned with is that a school is a place to which, while the public has no right of access, it definitely normally has access. That's the wording of the legislation, so we are quite concerned that this will allow picketers and organizers—actually, one of the great problems we have in Ontario now in the school system is access to school buildings. It's a continuing problem for all boards, rural and urban, so we would ask that some attention be given to that. I think that's just a question of, shall we say, more concentrated legislative drafting. However, we have brought this forward to the committee which looked into this originally and we don't see any change, so we're here again.

Ms Waese: Perhaps I could add that for the schools within the Metropolitan Toronto School Board whose programs are primarily for students who are handicapped, it would primarily close down that program for those

disabled. It's a significant problem, and I think it would be really a tragedy for them.

Mrs Cunningham: I'm wondering if you've discussed your concerns with the Minister of Education or if you plan to do that.

Ms Dunning: The information we've provided has been forwarded to the Minister of Education, I'm sure. Is that not correct? Yes.

Mrs Cunningham: Have you received a response or are you expecting to meet with him? I think this is so complicated that there ought to be a face-to-face meeting. Is that your intent?

Ms Dunning: It's a good idea. I don't think we have a meeting scheduled with him to discuss these matters, but you're right, it's complex enough and specific enough to the education sector.

Mr Jackson: And Mr Silipo has an extensive background as a former trustee, under the circumstances.

Ms Dunning: I'm aware of that.

Mr Jackson: And strong opinions of public record about how well this legislation would work.

Mrs Cunningham: I really would like to thank you for your positive suggestions. It's not very often we get specific suggestions for improvement, so I'd like to thank you for that.

On page 12 you talk about the circumstances where replacement workers should not operate, where such prohibition would cause, and you talk about the two examples. Would you suggest perhaps that this ought to be extended to hospitals and seniors' homes and whatnot? It's not just schools that are going to be affected in this regard.

Mr Stewart: I can see the rationale behind our position being applicable to a number of public, multi-unit situations like hospitals and municipalities. I think they have a lot in common with school boards. If they express these concerns, I think they could be handled in a similar way.

Mr Derek Fletcher (Guelph): Thank you for your presentation. Just a couple of things: On the occasional teacher thing, if the occasional teacher were on strike, you can use the regular classroom teacher if that teacher is from that school. You're not going outside the school.

Mr Stewart: No, you can't, sir. Excuse me. The only person this legislation allows us to use is a managerial person in the struck location. I would love to agree with you, because my—

Mr Fletcher: I just got this from the ministry staff. What I'm getting, right from the ministry itself is that yes, you can. Why don't we just make sure you get some clarification on that.

Mr Stewart: In case I don't get the clarification, I'm more concerned that you get it. Can I ask you to look at subsection 73.1(6) of the bill? It starts off, "The employer shall not use any of the following persons," and then it says in paragraph 3, "A person, whether paid or not, other than an employee of the employer or a person described in

subsection 1(3).” That’s a managerial person under subsection 1(3) of the act.

Mr Fletcher: We’ll get that clarified.

Mr Stewart: Please do. I’d appreciate it.

Mr Fletcher: As far as the bus thing and pooling together of parents and everything else is concerned, I’d be more concerned as a trustee about insurance as far as pooling together is concerned, especially if we’d done it as a school board. I’d be very concerned about doing things like that, and also about who has a driver’s licence if we’re pooling together.

On the number of bargaining units, one of the changes since the last consultations is that if the bus workers were to go on strike, workers from a non-bargaining unit could do the work of the struck workers, if it were agreeable with the union that was on strike. But then, once these people started doing the work, they could not be replaced. That’s one of the changes that has been made. If negotiations were ongoing and you were having a good relationship going, that is one possibility around the issue.

Mr Stewart: But it requires the consent of the person or the organization that, understandably under our system, is trying to cause harm.

Mr Fletcher: But as you were saying, if you did have the relationship going and negotiations were ongoing, that is one way around it.

Mr Stewart: I’m glad you got these clarifications. I hope we’ll see them in the amendments. You obviously have some information we don’t have. If we could see that—I say this quite positively—we’d be very glad to respond, if you think it’s intended to meet the points we’re making.

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The Vice-Chair (Mr Bob Huget): Thank you very much.

Ms Waese: Could I just make one comment?

The Vice-Chair: Go ahead.

Ms Waese: Mr Fletcher, you indicated concern about insurance and driver’s licences for volunteer pooling. We do all that. We have many of our volunteers driving our young people to activities, and we have covered them with insurance—we have an automatic coverage—and driver’s licences, all those things are carefully checked up, and we pay a high rate of insurance as a result.

The Vice-Chair: Thank you very much for your presentation. You should know you’ve made a very important contribution to the process, and I trust you’ll be following it along as we proceed through the process. Thank each and every one of you for coming down here this morning and presenting some very important views.

Mr Jackson: I appreciate Mr Fletcher coming forward with that information. Would he share that with the clerk and we can get a copy not only circulated—

Mr Fletcher: Just read it.

Mr Jackson: No, no, Mr Ferguson indicated he’s just received—

Mr Fletcher: My name’s Mr Fletcher.

Mr Jackson: Fletcher, thank you—a memo from the ministry clarifying a point. I’m asking that—

Mr Fletcher: No, it wasn’t a memo. I asked a question.

Mr Jackson: You indicated it was in writing. My point, Mr Chairman, is that this again is unusual. The information should not necessarily simply be shared with the government members to assist them in scoring debating points during a public—this is not a public debate; it’s open hearings. I again must reiterate my concern that this committee is not being facilitated with members of staff. This is out of the ordinary and I want to put that on the record.

Mrs Cunningham: Let’s have the clarification now, then.

Mr Jackson: Ministry staff should be prepared to clarify these concerns. Mr Stewart has a 30-year record of understanding of all aspects of education law in this province, and I trust his interpretations. If there is a point of new information, it shouldn’t be shared between two people who leave this room today; it should be shared with this committee, which is charged with the responsibility of looking at amendments and ensuring, as Mr Stewart put on the public record, that those amendments are brought forward. If the government is planning those amendments, then that information should be shared with this committee at this time and not be relegated to the realm of debating points for government members. I think it’s only helpful to the process.

I would again put that in the form of a request that the clerk be instructed to inquire from the Minister of Labour to have at the committee’s disposal during these hearings personnel who can offer up these brief points of clarification for the public record. It is helpful to our task, Mr Chairman. I put that in the form of a formal request and will then therefore put it in the form of a motion.

Ms Murdock: Actually, ministry employees have been—well, they’re sitting at the other table today, but they’ve been sitting over there for any of the committee members. I get up and go over and ask them for clarification and then come back. But in terms of that, the government is not speaking of an amendment; it’s already there in Bill 40.

Mrs Cunningham: We’re looking at it.

Ms Murdock: Yes, but in that particular section Mr Jackson has just mentioned in regard to what Mr Stewart was saying, under paragraph (6)1 under section 73.1. I know it gets complicated with the numbers, but that section specifically speaks to the concerns they had. It is not a new thing. It’s not an amendment. Whether or not it’s been read and not interpreted that way is one thing, but it’s certainly not because ministry people were not here to provide the information. They are there; they’re just not at the microphones.

Mr Offer: I recognize that we’ve just heard another important presentation on this bill. I won’t be long, but I think this presentation speaks to another matter, and that is that there are individuals, groups and associations which are coming before the committee speaking about their concerns

about the bill, speaking also, in fairness, about where they support the bill, but there are a number of individuals who are coming and saying, "Listen, this is what we think the bill means to us."

I would think, and from my experience, when there are those groups that come before the committee that have questions as to what the section means, really asking for some direction, I know the Ministry of Labour has very good staff, very good people, who are very well able to respond to those questions.

I would ask, Mr Chair, especially in the presence of the parliamentary assistant and members of the Ministry of Labour, that there be some discussion over this lunch break as to whether it is most appropriate that individuals—either the parliamentary assistant, the minister or staff of the Ministry of Labour—be at the table where you are seated, Mr Chair, so that when groups come forward with concerns about the legislation as to what they think it means to them, there are people who can either take note of it and undertake to get back to them or provide that answer on the spot. It will be helpful for us as we deliberate the legislation and helpful, I believe, for the general public, as to what this means.

So I would ask that in the time over the lunch break there be some very serious consideration made by the parliamentary assistant and ministry staff, so that this re-

source, apart from our research and everything else that's on hand, be available to so many people who want to be heard by this committee.

The Vice-Chair: Thank you very much. I've listened very carefully to the discussions here and we are in recess until 1:30 pm.

Mr Jackson: Mr Chairman, there is a motion on the floor. You cannot dismiss it. I've moved the motion that the committee request ministry staff to assist with the deliberations of the committee. Speaking to that motion, Mr Chairman [inaudible] in any way they see fit in order to let us do the job properly. If you're ruling my motion out of order, fine, but you cannot leave the chair with a motion dangling that I put on the floor.

The Vice-Chair: Mr Jackson, the subcommittee has agreed to the hours of sitting of this committee from 10 o'clock until 12 o'clock and from 1:30 and continuing on.

A lunch-hour break will provide the opportunity for discussion on the issue between the parliamentary assistant and ministry staff, as Mr Offer has suggested, and we'll resume at 1:30.

Mrs Cunningham: When will we be dealing with the motion?

The Vice-Chair: We'll resume at 1:30.

The committee recessed at 1207.

AFTERNOON SITTING

The committee resumed at 1330.

The Chair: It's 1:30. We're ready to resume. There was a motion moved, as I understand it, by Mr Jackson at around 12 just before we broke for lunch. That motion is out of order as there is still a motion on the floor by Mr Turnbull about which debate has started but about which there has been no vote.

Mr Jackson: On a point of order, Mr Chairman: Very briefly, could you explain to me why the previous motion has not been dealt with and why the ruling would preclude and hamstring this committee from any future motions. We are in your hands, as the Chair. Are you an informed Chair on this issue?

The Chair: It's Mr Turnbull's motion. He indicated that he wished an opportunity to speak further to it. He hasn't been with the committee now for some time. It's my view, there having been no objection raised at the time Mr Turnbull made that indication, that Mr Turnbull has that prerogative.

Mr Jackson: Did he stand down his motion?

The Chair: The motion was adjourned with the normal course of the day's business. That motion is still outstanding. As long as that motion is outstanding, in my view, any further motions are inappropriate, short of an amendment to that motion.

Mr Jackson: Has Hansard confirmed that the motion was not dealt with? I wasn't present for the meeting, but I do have the right to understand clearly before we proceed the nature of the ruling. Did he stand down his motion?

The Chair: The motion has not been dealt with. Debate on the motion was adjourned.

Mr Jackson: Is it not the case that it become the first item of business when the committee reconvenes?

The Chair: It's going to become the first matter of business when this committee isn't charged with hearing submissions from delegations.

Mr Jackson: Then why are we not debating Mr Turnbull's motion right now?

The Chair: Because we've got the International Union of Operating Engineers scheduled here for 1:30 this afternoon and it has a half-hour. We've used up three minutes of their half-hour on your point of order. I've ruled on the point of order.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793

The Chair: Please try to save the last 15 minutes of your half-hour for questions and dialogue. Gentlemen, tell us who you are and what your status is. Tell us what you will.

Mr Jack Slaughter: Thank you, Mr Chairman. My name is Jack Slaughter and I'm general counsel to the International Union of Operating Engineers, Local 793. With me is Mr Richard Kennedy, who's president and labour relations manager of the local, and Mr Matthew Kellway,

who is legal and labour relations assistant to the local. Mr Kennedy will begin by giving a brief description of who the union is and whom it represents and then I will highlight what I believe the priorities are in the legislation that Local 793 would like to see addressed.

With that, I'd ask Mr Kennedy to introduce the local and what it's all about.

Mr Richard Kennedy: Local 793 is a construction union with approximately 10,000 members covering earth-moving, excavating, surveyors and hoisting equipment in all sectors of the construction industry throughout the entire province. We're a provincial local. We've been active for 73 years and have collective agreements with approximately 1,500 employers including municipalities and others in the industrial sectors. Primarily, most of our members are employed in the sewer and watermain, roadbuilding, utility and gas distribution sectors and the industrial, commercial and institutional sectors.

We consider ourselves in many respects leaders in the construction industry, as far as organized labour goes, in health and safety, training facilities, organizing and in labour relations. We have a good staff and we've put a lot of thought into the things we do.

With that, I'll ask Jack to make his presentation on the brief.

Mr Slaughter: I'm going to try to keep things short. I realize the committee's had extensive hearings and has heard from many parties. We've prepared a five-page brief which I believe has been distributed by the clerk. I'm not going to read from the brief but I'm going to highlight various items and speak to some real-life examples we've had that illustrate the points I'm making.

On the whole, Local 793 supports Bill 40. We believe it's a progressive initiative that addresses the reality in the 1990s in terms of the fairness, cooperation and competitiveness that make this province great and will ensure the province is healthy throughout the remainder of the decade and in the future.

I want to highlight various items that appear in the bill and Local 793's position with regard to them. I'll address them in the order in which they appear in the brief.

First is the proposed elimination of the \$1 fee for membership. This is an anachronism. If one looks at the recent Ontario Labour Relations Board jurisprudence, one can see that the board doesn't give a great deal of weight to the \$1. With the impact of inflation, that's not a meaningful sum today. What the act addresses is the desire of individual employees to be represented by a trade union. Unfortunately, what has tended to happen in the case law and in the experience of Local 793 is that emphasis and litigation on the \$1 requirement has become a means of complicating, protracting and attempting to frustrate certification efforts.

In the seven years I've been general counsel to Local 793 and processed approximately 300 certification applications, twice has the question of whether \$1 had been collected by one of the collectors been litigated before the board. In both of those cases the allegation made by the

employer was dismissed. The only effect of that litigation was to prolong the certification process, cause the board to travel unnecessarily and increase the level of hostility between the employer and the trade union. In other words, it didn't serve to achieve any of the objectives that the Labour Relations Act attempts to achieve, nor was any of the union's membership evidence invalidated. Consequently, it's been our experience that all the current situation does is lead to litigation and disharmony. That's why we're in favour of eliminating the \$1 requirement.

The next issue—and we feel quite strongly about this—is extending the right to organize for certain groups that are now excluded from the Labour Relations Act. In particular, I draw your attention to workers engaged in agriculture, silviculture and horticulture. As Richard Kennedy has stated, Local 793 represents a great number of employees engaged in the operation of heavy equipment. That type of equipment is commonly used by landscaping contractors and in large agricultural operations. If one looks at the work being performed by employees doing those tasks, it's not a great deal different from that done by employees now in bargaining units represented by Local 793. The same can be said of people performing labouring functions. Furthermore, when one looks at large-scale mushroom farms and chicken hatcheries, it's hard to draw a rational distinction between other industrial operations and those types of operations.

Again looking at decisions of the labour relations board, there were several attempts by the board to certify those persons and employees that have been overturned by the courts based on the narrow reading of the legislation. There are trade unions out there, including the Operating Engineers, the Labourers and the Food and Commercial Workers that are ready, willing and able to represent those employees. Especially in this era of the Charter of Rights and Freedoms, there's no good reason why those employees shouldn't have the collective bargaining rights that employees in all other industries do.

Third, I'd like to address the issue of the support thresholds in the act. Those are reducing from 55% plus one to 50% plus one the number of employees required for automatic certification in construction industry applications and from 45% plus one to 40% plus one for the percentage required for a representation vote.

I've attached to the back of the brief an excerpt from a labour board decision on Smiths Construction that addresses the factors that make the construction industry distinct from other industrial settings: the seasonality, the interweaving of contractual relationships, the mobility of contractors, including both contractors coming in to do construction work in this province from outside the province or outside the country or employers who, say, operate a home base in Toronto but go to work in disparate locations such as Kingston, Sault Ste Marie and London.

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There's a need for expedition in operating a construction business that also applies in representing the employees of construction businesses. The recognition of that reality has led the labour board to develop certain rules that accommodate construction. We think the initiative of

the Legislature in this regard also is responsive to those different construction realities.

Next, with respect to the submission of membership evidence, and more specifically petitions, other than jurisdictional disputes this is probably the issue that occupies more resources of employers, trade unions and the labour board than any other. Unfortunately, the reality is that there are very few petitions or statements of desire that are found by the board to be voluntary. It's certainly less than 10%. It's a very insignificant number compared to the resources spent on litigating those issues. It's something that again creates artificial hostility between employees, employers and trade unions, prevents the parties from quickly coming to grips and dealing with one another on a serious and professional basis.

Therefore, we support the initiative to make the date of application the relevant date for submitting all membership evidence both in support of and in opposition to a trade union. This is in place in a number of other jurisdictions, including the federal jurisdiction, Manitoba and others, so it's certainly not a radical or unprecedented move, and it's one that would lead to greater efficiency and cooperation in this province.

For similar reasons we support the initiative to give the parties access to first agreement arbitration after a 30-day period. This is not because we want to see government-imposed contracts on employers in trade unions. Rather, it's the opposite: This will give an incentive for both parties to deal rationally and reasonably with one another and to fashion their own solutions. That, to some extent, is the effect of the current legislation. However, again one goes through a hearing that promotes hostility between the parties, where unions or employers are placed in the position of proving the other party has acted in bad faith, improperly, failed to recognize the authority of the other and promotes a confrontational rather than cooperative atmosphere.

I realize I'm down to about three minutes, according to my clock, so I'm going to move very briefly over the next items.

Just-cause protection for employees imposed from the time of certification to first contract and from the time of being in a legal strike or lockout position to the imposition of a new contract: That's a gap in the legislation. Certainly, I don't think anyone would argue, on either side of the fence, that just-cause protection is something that's improper or shouldn't be accorded to employees. That's a gap in the legislation that's addressed.

Likewise, we strongly believe there is need for expedited hearings for persons who are dismissed during an organizing drive. That's a right and freedom granted to persons under the Labour Relations Act and the laws of Ontario. If employers are entitled to quick hearings for cease-and-desist orders for illegal strike violations by trade unions, similarly employees should be entitled promptly to be heard as to whether their employment should be continued. They're equally serious violations. A person shouldn't have to endure a lengthy period of unemployment and substantial loss of earnings for exercising protective rights under the act.

We also strongly believe in placing time limitations on decisions of arbitration boards. Whether the decision is for or against you, whether a union or employer, you have the right to know what that decision is so you can order your affairs and get on with running your business and representing your members.

We also support the change in terms of bargaining structure whereby, at the board's discretion, part-time and full-time employees can be grouped within a single unit where the numbers warrant. This will encourage the organization of part-time labour, and because of economic realities that's been a growing force within our economy. It's a group where frankly there's not a lot of incentive, in particular cases, for unions to organize because it may be relatively small compared to the full-time unit and have, it's recognized, a somewhat different interest. It's an incentive for those people to get the same kinds of rights and representation full-time employees have. I'd strongly urge you to consider that matter.

With respect to limitations on the use of replacement labour, we recognize this is a sensitive issue for both sides. However, both Quebec and Manitoba have legislated in this regard with, we think, good effect on the labour relations in those provinces. We recognize there are certain essential services or particular situations that will have to be addressed to make this legislation workable. We think that can be done. We think this Legislature and this committee should perhaps consider striking industry-wide committees or using the regulation-making power to address those items.

I see my time is just about up. On the whole, we support the initiatives in Bill 40. Certainly there are some areas that need to be looked at in terms of the drafting and so on. In this short presentation, I'm not going to touch on those technical matters. Mr Kennedy and I thank you for your consideration of our views. If you have any questions, we'd be pleased to try to answer them to the best of our ability.

The Chair: Mr Jackson, four minutes please.

Mr Jackson: I have no questions at the moment.

Mr Paul Klopp (Huron): Thank you very much for your presentation. I found it reasonable and balanced. You seemed to actually try to reach a consensus between labour and management for these changes that are proposed, to allow choices. I think that's good. It helps me to make my mind up and to make decisions.

You mentioned at the very end the replacement labour situation. Bill 40 has a provision in it which wants to promote advisory committees between the workers and their management. That's to deal a lot with potential closures. But you mentioned getting industry and management and workers to work together on committees. Would you see that as a vehicle to expand that, to work on such issues like this? Could you expand?

Mr Slaughter: I think that's something that could be useful, Mr Klopp. For example, Local 793, as Mr Kennedy has said, primarily represents employees engaged in construction. But we also represent employees of municipalities, the waste disposal and hazardous waste industries,

sawmills and so on. We recognize in our contract negotiations with our various employers that they require different conditions and treatment.

For example, in the construction industry one of the things that's developed now in terms of strikes is what they call the two-gate policy developed by the labour relations board. For example, the construction labourers are in a legal strike position, but other trades such as the operating engineers, the carpenters and the plumbers may not be. The labourers don't want to disrupt the other trades and their contractors unless their work is being performed.

One of the things the labour board has developed in its wisdom is that one gate will be established for the construction labourers, and that's where anyone performing labourers' work is to enter, and another gate established for the other trades. Those trades and their employers don't feel that they're violating union solidarity or disrupting labour relations by attempting to do the labourers' work. The labourers will not be allowed to picket that other gate unless employees doing their work are trying to enter through that gate. That's the sort of cooperative mechanism that's developed right now between the labour board, employers and trade unions. That policy is not a perfect one but it's an accommodation between the parties that tends to work.

I can see in the waste disposal industry—I think we all recognize that with increasingly toxic types of wastes and dangerous things and simply the accumulation of waste in a long strike, how does one deal with that? Does one need legislation ordering those employees back to work because of a hazardous situation or is there a compromise that can be worked out? I don't have a magical answer for this committee.

We have contractors such as Waste Management and Laidlaw. We represent those employees there. Unions such as ourselves and CUPE that represent those employees, were we to work together on a committee in cooperation with government, we could come up with some sort of regulations or patterns that would work so that we wouldn't need back-to-work legislation but would develop a workable framework for that industry.

With sawmilling, the Woodworkers are certainly a much larger presence than the Operating Engineers there. I wouldn't try to pretend otherwise, as are the Paperworkers. But again, those industries have particular needs in terms of how their machinery can be safely run, what equipment can be shut down, inventory-taking.

Our sister local, Operating Engineers Local 796, and the other stationary locals I work from occasionally—I know there's a draft Operating Engineers Act and I've been contracted by the Ministry of Consumer and Commercial Relations asking, how do the stationary engineers feel about their obligations, the obligations of their employers in shutting down boiler rooms and steam plants and so on? The ministry has been quite cooperative in soliciting the comments of Local 796 and the other stationary locals and the employers.

Yes, I think it's a consultative, cooperative mechanism that can work. I think it's something that should be encouraged, because one of the things about the Labour Relations

Act—and I don't think we want to get away from it—is that it facilitates bargaining and ongoing relationships between employers and trade unions.

I don't think we want to go the route of the Canada board, where it's this overarching board that tells everyone what to do. Certainly there are situations where that's needed, on both sides, no question. But I think the greater the extent to which both players in the industries can work together, the better solutions you get. I find the more things that are generated from the workplace floor or from the office floor from our employers, the better it works for everyone.

1350

Ms Murdock: Thank you. On page 2 of your presentation—you did mention it when you were speaking, in regard to the 50% plus one, which was in the consultation paper—there's been a typographical error, because that was deleted and when the deputy was here he made that statement, that it's still at 55%. Just so you know that. I didn't want you to leave here—

Mr Slaughter: We would support reinstating the 50% plus one. I realize the volume of items before the committee, so I hear what you're saying on that issue. But the comments I've made with respect to the uniqueness of the construction industry are valid and, while I realize it may be difficult to get that item back on the table, we still feel it's correct and we still support the change to 40% in terms of the representation vote threshold, although I will say in practice I don't know if that's going to make a tremendous amount of difference. In my experience, if the union can't win votes with the 45%, it may not be able to win votes with the 40%. But I appreciate your commentary.

Ms Murdock: I wanted to go to the decision that you appended on the back, number 10, ascertaining the number of employees of the bargaining unit at the time the application was made and whether or not the comments made by this arbitrator were generally common to many of the decisions you get in relation to application and timeliness.

Mr Slaughter: This is the board's standard policy in the construction industry. The only employees that count for construction industry application are those employees actually physically at work on the date of application. Sometimes that works in the union's favour; sometimes it works against.

There's a famous labour board case where the union filed the application in the morning but all the employees were unable to report because of a snowstorm, so their application was dismissed. So it went against the union in that case. In other cases, the employer will say, "Some of my employees were on vacation." The labour board has said, "We're not going to consider that either." It's not something that works all pro-union. It's a neutral standard.

The reason for that type of standard is that employment fluctuates from day to day in the construction industry, particularly in roadbuilding operations in the lesser-skilled positions such as flag persons—no offence to my friends, the labourers—and manual labour. Persons are often hired by the day. Rather than engaging in a long-ranging inquiry of how many employees you had on each day in each of

the last 30 days in the month and how many of those employees should count, the board has developed this rule of thumb that essentially has been used, I would say, for about the last 30 years. If I gave you the entire decision you would have—

The Chair: Thank you. We've got to move on to Mr Offer.

Mr Offer: Thank you for your presentation. It's good to see you again. Members of the committee should be aware that at your head office you have a wonderful training facility which is probably one of the very best of its kind for the area in which you're involved. I don't want to extend an invitation to everyone else but everyone should go and see how the training facilities are actually operated. It's very interesting to see. I congratulate you on that.

I have one question on your presentation in the area of petition. You'll know that we've heard lots of presentations on this. However one wishes to style the question, basically the time frame that now exists for putting in petitions has been abolished under Bill 40. In other words, there is no more time between an application and a terminal date. My question to you is, because of this change, do you have any concern about the right of a worker to change his mind in any organization drive?

I ask you that because I know we have discussed these and other matters earlier and I think it's an important area because there is a concern that these changes do take away what was previously in the legislation, and that is the right of an individual to have a lengthier time frame to change his mind. Could you share with us your thoughts on that?

Mr Slaughter: Yes, I would, and I might ask Mr Kennedy at the end to comment on that as well.

I will get to the question very shortly but first I would like to thank you for your kind remarks about the training institute. I would, on behalf of the trustees of the training institute, extend that offer to everyone around the table to come and attend the training institute. I point out that it is jointly trusted by an equal number of management representatives and union representatives. We hosted an international conference where it received similar accolades from people throughout Canada and the United States.

I will quickly turn to your question because it's a valid comment. First, employees will still have the right to appear before the labour board and address a whole series of issues: They have status to appear before the board and address the appropriateness of the bargaining unit, the inclusion and exclusion of employees from the bargaining unit, any charges that the union membership evidence has somehow been gathered improperly and any other relevant issues before the board. So their status to appear before the board is not diminished.

Second, it's been our experience—this is what I'm going to turn to Mr Kennedy on—that very few of these petitions or statements of desire are generated from the employee himself. That's unfortunate but that tends to be the reality. The vast majority of petitions are generated after conversations with the working foreperson, with the owner and with circulars distributed by the employer; that's why the vast majority of petitions are found to be

tainted. I won't repeat what I said before, but it tends to be the employer after the fact marshalling its forces, which leads to hostility on the employer's side, and of course it's met in kind with hostility on the union's side, and it's not a cooperative relationship.

In the cases of larger organizing drives where there is true dissatisfaction on the part of employees, petitions will still be filed before the certification goes in. We just had a very large organizing campaign in the Ottawa Valley, for example, and as soon as the union was around the job site, petitions were being circulated against the union. If those petitions are filed, the board has to consider them even with the legislation.

So there is a change in the structure, in the timing, for those wishes, but there is still a very valid form for expressing them.

Richard, maybe you could address your experience in that area.

Mr Kennedy: To an extent, we control the date of application by the number of cards we sign. Sometimes the weather and the scheduling of work have something we don't know about, so we're not in total control of the date of application. But at the same time, while the worker who signed has the right to change his mind after the terminal date, the same goes for the people who did not sign a card. We've often used that period to increase our count, so to say, and that will be taken away from us.

For the purpose of getting rid of petitions: I don't know what the percentage is but it's overwhelmingly that they're thrown out and they're used as a delaying tactic only to stop a certification drive from going forward in a speedy manner. We'll live with that end of it.

We'll also live with not having the time to come after the heat's off, so to say, and quietly sit down with people and tell them what we're about once that terminal date has been—the application date. We'll lose our ability to go back in another atmosphere or another setting, a much quieter, less strenuous setting, to get more cards signed.

The Chair: Gentlemen, I want to thank you very much for appearing here today on behalf of the International Union of Operating Engineers. You've made a valuable contribution and I'm confident you've been helpful to the members of the committee. Thank you for being here.

1400

SOUTHERN ONTARIO NEWSPAPER GUILD

The Chair: The next participant is the Southern Ontario Newspaper Guild. The people who are speaking on behalf of the guild, please come seat yourselves in front of a microphone and tell us who you are and your title, if any. We've got half an hour. Try to give us at least 15 minutes for discussion and questions. I suppose it's not inappropriate that the newspaper guild would be attracting so much attention from the newspapers. Go ahead.

Ms Gail Lem: Thank you for the opportunity to comment on Bill 40. My name is Gail Lem and I'm president of the Southern Ontario Newspaper Guild. To my left is Peter Murdock, who is the staff representative with our union. We're a 3,000-member union representing em-

ployees in the newspaper, magazine and book publishing industry.

Due to time constraints, I'm not going to read this brief in its entirety, but I trust that the committee will do so at a later date and take all of our concerns into consideration.

In recent years, we've had direct experience with a number of organizing campaigns and with the difficulties in bargaining first contracts. In the past year, our members have been on strike for first contracts at the Cambridge Reporter, as you well know, and the Guelph Mercury. Both contracts are now being settled through first contract arbitration. In addition, 1,600 of our members were on strike for a month this year at the country's largest newspaper, the Toronto Star. In all three strikes, the companies hired replacement workers.

Our experiences have taught our members that reforms to the Ontario Labour Relations Act are long overdue. The act must be changed, because as it currently stands it enables unscrupulous employers to obstruct employees' rights to organize and it enables some employers to avoid their responsibility to bargain. The act and the Ontario Labour Relations Board have also failed to keep pace with changes in the workforce and in the workplace, as the government has recognized.

We reject arguments of critics who say that reform will tip the balance in labour relations. The assumption behind such arguments is that there is currently a finely tuned balance. This is far from the truth. Too many employees in Ontario, in our industry and in many others, find themselves working in small groups for large and powerful employers, employers who are sometimes willing to use their huge resources to crush the rights of their employees or to stop the spread of unionization.

We are pleased that Bill 40 recognizes that collective bargaining is a system worth encouraging, preserving and strengthening. We're disappointed with the compromises the government felt it had to make and we urge reconsideration of some of the issues and proposals that were dropped from the discussion paper.

In my comments, we'll attempt to address only areas where we have direct experience and where we feel we have something to add to the debate. In areas not mentioned, we support the position of the Ontario Federation of Labour.

We'll also attempt to address the arguments put forward by newspaper owners who appear to be claiming that their businesses will be disproportionately affected by the amendments, particularly the restrictions on the use of replacement workers. The chorus of protest coming from newspapers is coming from companies whose hands, in many cases, are far from clean. Employers in this and other industries whose history is littered with attempts to budge an employee's rights have little credibility talking about fairness in labour relations.

Section 7, on full- and part-time employees: We support Bill 40's approach, which recognizes that there's no logic or rationale to split full-time and part-time units automatically. Our experience in this area indicates that the current rules separating the two groups at the request of one party has been an instrument used by employers who

wish to bargain separately with full-timers and part-timers in the hope of weakening one of the groups, usually the part-timers.

On section 8, the consolidation of bargaining units: We applaud the government for providing a mechanism to consolidate some bargaining units but we believe the approach is too timid. We also have misgivings about subsection (4) of the new section 7, which we believe will create unnecessary disputes over whether different locations of an employer's operation have significantly different methods of operation or production. Consolidation of bargaining units is a key issue if the labour relations system is to adapt to the changes in the workplace.

For collective bargaining to work for many Ontario workers, the act must recognize that large numbers of employees work in small workplaces owned by large employers. This is especially true of the newspaper industry, where dozens of small workplaces are owned by only a handful of companies. These employees do not have a chance at fair collective bargaining if they have to face the large employer in separate small groups.

The argument is also stronger in the newspaper industry because the industry is one of the few where the board has allowed organizing by department within a workplace. For example, at the Globe and Mail, where I work, we have five bargaining units and five collective agreements. It has long been our position that the contracts and the bargaining units should be consolidated, but the employers will not agree and there is no mechanism to have the method adjudicated.

But why does Bill 40 stop at consolidating only units of the same union? Fragmentation of bargaining units does not serve the interests of productive and efficient collective bargaining. We believe Ontario should adopt a position similar to that of the Canada Labour Relations Board, which has used its power to consolidate bargaining units of more than one union at one employer where the situation warrants.

We also believe the government has not gone far enough to encourage broader-based bargaining. This is a crucial issue if the collective bargaining system is to be modernized and serve the needs of employees in rapidly growing sectors such as the service industry. We urge the government to look again at this issue, and in particular we support those who are calling for a comprehensive study of broader-based bargaining.

On section 8, support required for automatic certification, we believe the retention of the current 55% threshold for automatic certification is offensive to the fundamental principle of majority rule. We believe the union should be certified immediately when the majority is clearly in favour.

We reject suggestions that there be a vote on all certifications. The act has long viewed the signing of the card as a vote for the union, and that approach has proved its validity.

On first-contract arbitration, we believe it is vital to improve access to this remedy. The act's current requirement that the board conduct an exhaustive survey into the history of bargaining in order to determine whether first

agreement arbitration is warranted has often made a mockery of the idea that this remedy should be a quick one.

For example, our union applied for first-contract arbitration at the Cambridge Reporter on November 28, 1991. Despite a purported 30-day time limit in the current act, hearings dragged on into February 1992 and we did not receive a decision in the case until approximately three months after the application was filed. All of this time, our members were on strike. The situation in Guelph was similar.

We believe Bill 40's proposals in this area are a step forward but we seriously question the need for a 30-day waiting period after the legal strike lockout date. This would force some groups into a strike or lockout situation by an employer who felt that a month-long dispute could break a newly formed union.

On section 32 on the use of replacement workers, in all three strikes our union has been forced to take this year, the employers have used replacement workers. In all three cases we can say unreservedly that the use of replacement workers inflamed passions, created unnecessary picket line confrontations, damaged the long-term relationship between the parties, ate up scandalous amounts of police resources in the communities concerned and, above all, lengthened the strikes.

A ban on the use of replacement workers would be the single greatest step in civilizing labour relations in Ontario. We are confident that had Bill 40 been in place when the strike at the Toronto Star began in early June, the strike would have been considerably shorter than its 31 days. In fact, we believe the strike may not have occurred at all had the Toronto Star not been able to avoid bargaining key issues by simply ignoring them and relying on its ability to hire new people if our union called a strike.

We believe it's time to call a halt to the right of employers to bully rather than bargain and to the all-too-common scenes of picket line violence. Bill 40 is a step in the right direction. However, we have serious concerns about three large loopholes in the legislation.

First, we believe the employer's right to shift bargaining unit work to another geographic location or to contract out bargaining unit work will enable some employers to avoid their duty to bargain.

Second, we believe it's impossible to enforce the bill's well-intentioned prohibition of reprisals for non-management, non-bargaining unit employees who refuse to do bargaining unit work during a strike or lockout. It is naive to believe that employees, particularly those without union protection, will not be subjected to subtle pressures to fill in for the striking employees. And it is unrealistic to believe that these employees will insist upon their rights when they are subject to such pressures. Bill 40 should adopt the discussion paper's approach and ban the use of non-management, non-bargaining unit employees from performing the work of strikers.

Third, and this is really important to us, we're concerned that the bill does not appreciate how much work in our industry and in others can be done from any location as long as the employee has the computer and a modem to transmit work to a location where a strike is taking place. The restrictive phrase "at a place of operations in respect

of which the strike or lockout is taking place" in subsection 73.1(6) creates a loophole. In our industry, for example, it apparently would allow a freelance writer who had been used by a newspaper before bargaining began to vastly expand his or her work for the paper during a strike as long as he or she worked at home and had a computer link to a strike-bound newsroom. We urge the government to close this loophole.

1410

We also wish to address some of the arguments being made by newspaper owners, who claim their industry deserves special treatment and who have pushed their arguments to the forefront of the public debate by using their own newspapers to publicize their views.

The owners suggest that a newspaper cannot be shut down during a labour dispute and live to tell the story. This is not true. There have been numerous instances of newspapers ceasing operation during a strike or lockout and returning afterwards, most recently at the Sudbury Star, which locked out its staff for five weeks less than two years ago. The Sudbury Star is still alive and quite well, having recaptured readers and advertisers despite competition from the two Toronto dailies which circulate in Sudbury, two television stations, numerous radio outlets and a twice-weekly community newspaper.

The owners also suggest that Bill 40's restrictions will require a shutdown of any newspaper during a labour dispute. This is not true. The Montreal Gazette operated in 1987 despite a strike lockout in its production department and despite Quebec's anti-scab law, after making a decision that it had to publish during a dispute. We strongly disagree with that decision to publish, which was made in order to extract concessions from employees rather than to resist union demands. But the fact that the Gazette published under an anti-scab law tougher than Bill 40 contradicts the newspaper owners' arguments.

The owners cite the death of the Montreal Star in 1979 after a strike as an example of the harmful effects of Quebec's anti-scab law. It is not. The Montreal Star case is an example of why it's usually smarter to bargain and settle than to fight. The Montreal Star died because Montreal's English-speaking community could not support two competing dailies and because the Star lost readers and advertisers to the second-place Gazette when it shut down during an eight-month strike. Even the owners of the Star admitted on closing the paper that had they bargained with the production unions rather than fighting them, the Star would have lived and the Gazette would have died. A similar situation, we'd like to point out, is unlikely in Ontario anyway; only two Ontario communities, Toronto and Ottawa, have competing daily newspapers.

The owners also suggest that their industry is special because news is perishable. They suggest they cannot stockpile material. Well, I work in a newsroom and I can tell you this is not true. Newspapers that choose to publish during a labour dispute have access to Canadian Press and other wire services and also regularly stockpile feature stories and less time-sensitive articles when they are preparing for a possible strike or lockout. The Toronto Star is only the

most recent example of a newspaper that managed to fill its pages when it decided to publish during a dispute.

The owners also suggest that news is perishable in the sense that once a news event happens and is not written about readers are no longer interested. This is no doubt true for most of the material in newspapers, but it is no more true for our industry than for most others. In almost every sector of the economy, customers will look elsewhere if you cannot produce or deliver your product. This merely suggests that in a competitive industry labour disputes can be a high-stakes game. When this is the case, the incentive for both sides to settle is high and the settlements are exactly what a labour relations law should be encouraging. The newspaper industry has managed to ensure it has less competition than many other industries. Still, we are confident that Bill 40 will in any competitive industry provide an incentive for settlement rather than for conflict.

Finally, newspaper owners suggest that unions in our industry are very powerful and that there is a balance of power that should not be tampered with. This is not true. Only a handful of daily newspapers in Ontario are not owned by huge corporations. Even small community newspapers are also widely owned by large chains. This means that the bulk of the newspaper industry is structured in the same way as much of the service industry, namely, relatively small workplaces owned by large and powerful corporations. The suggestion that unions in the industry are powerful and can bargain whatever they want under the existing law would be seen as a cruel joke by our members at the Cambridge Reporter and the Guelph Mercury, where small groups of very low paid employees had to fight for their rights against one of Canada's largest companies owned by the eighth richest man in the world.

There is no reason at all to give any special consideration to the newspaper industry. We strongly believe that Bill 40, particularly if some loopholes are closed, will improve the labour relations climate in our industry and in others.

I just want to turn briefly to the end of our submission to talk about internal union democracy. We realize that consideration of Bill 80 is beyond the committee's current mandate and we would like an opportunity at a later date to express our views on that bill. However, we wish to make some comments today about internal union democracy, which we believe should be on the agenda for any consideration of amendments to the Labour Relations Act.

The view that unions are private organizations that do not need to be regulated by statute is, we believe, outmoded. For one thing, unions are given many rights in the act and should have corresponding obligations in conducting themselves democratically and, in the case of international unions, in giving their Canadian members proper services and decision-making powers.

Bill 40 moves timidly in this direction by requiring a strike mandate in order to invoke the restrictions on replacement workers and Bill 80 takes a major step by recognizing the rights of Canadians within international unions in the construction industry. But why is internal union democracy a concern only in the construction industry?

We strongly urge the committee to look at changes that would deny unions the right to impose or threaten trusteeships against locals whose only crime is dissent or seeking affiliation with another union. We believe good unions have nothing to fear from legislatively guaranteed standards of democracy.

Last, I would like to thank the committee for the opportunity to raise our concerns. We congratulate the government for understanding the importance of labour law reform.

Mr Brad Ward (Brantford): Thank you to representatives from SONG here today for the fine presentation and thought-provoking views that you've presented.

First of all, I think that pretty well everyone, whether you are in opposition to Bill 40 or in favour of Bill 40 or feel Bill 40 doesn't go quite far enough, thinks there is a need for updating the existing labour act, that it no longer reflects today's workforce or workplace.

I would like to focus specifically on the aspect of first-contract arbitration. You touched on a couple of situations that your trade union has experienced, the employees of two what I would call smaller community newspapers, the Cambridge Reporter and the Guelph Mercury, where there seems to be undue delay in resolving concerns at those particular newspapers.

Could you perhaps expand on some of the problems that your particular trade union experienced, and as well expand on why you feel it's important to have expedited first-contract arbitration?

Ms Lem: With respect to the first-contract arbitration process in particular, the current act says that once a union or an employer, once either party applies for first-contract arbitration a decision will be made within 30 days.

During hearings at the labour board we were told by the board that the board had already ruled that that section of the law was directive and not mandatory, so they recognized that they ought to give us a decision within 30 days, but all kinds of things got in the way, like any other court system. The hearings dragged on for three months, because the board did not take the 30-day rule seriously. Part of that was requiring an absolutely exhaustive amount of work from ourselves, our bargaining committee, and also the company to be brought forward to see whether we deserve to have first-contract arbitration.

The fact of the matter is that this process took at least 60 days longer than it ought to have. It meant that our members were out on the street in the dead of winter walking the picket line instead of working. Both of the strikes were ugly strikes because of the use of replacement workers, to some degree, and the amount of tensions that were then raised on the picket line as a result. You know, when people are out of work and they're walking the picket line in the dead of winter they get very upset at seeing other people take their jobs. The fact of the matter is that the 30-day rule was a good idea if the board would stick to it, but it didn't.

Second, the proposals say there should be a 30-day waiting period after the legal strike lockout date, and we believe that should not be necessary. That doesn't mean

that there will be a 30-day strike or lockout, but it provides the opportunity for there to be one and for very powerful employers to push people out on the street unnecessarily in an attempt to break the union.

We believe that if first-contract arbitration were available automatically as of the legal strike lockout date, the system would still provide enough incentive on both sides to bargain, and that's where we would like to see the law changed. At that point the parties would have gone through conciliation and gone through mediation, and we believe that if they were serious about achieving a first contract, they would have done so and they would do so rather than risking putting the matter in the hands of a third party.

The Chair: We've got to move on.

1420

Mr Offer: Just in response to that last question, I think you indicated that on first-contract arbitration there was a need for a strike for 30 days. This legislation does not require that, on my reading. It only requires that you be in a strike position for 30 days as opposed to being on strike. In fact there have been some presentations around that, so I'd just like to state that as a matter of clarification.

My question of course deals with the major portion of your presentation around the issue of replacement workers. What I would like is if you could please explain to us, during a strike—and I have no quarrel with the right of a worker to associate, to join a union, to strike; that's a given and I have no problem with it at all—but where there is a strike, that same worker I believe has the right while on strike to obtain other employment. I have no quarrel with that either. I think that should be allowed.

If all of those rights are allowed, why isn't there with that the right of an employer, how best it can, to attempt to keep its operation running with all those difficulties that might arise? If we're recognizing all of those rights, why not that right of an employer to continue operations, as difficult as it may be.

Ms Lem: Because, quite simply, there is no balance of power. The companies have a lot more power, money, flexibility and so on than the employees do, and it frustrates the process of collective bargaining. In fact it makes a mockery of the process of collective bargaining to give workers the right to withdraw their labour and then say, "It doesn't matter because you don't have any power anyway." The company can continue to operate as if you didn't withdraw your labour. It makes a mockery of collective bargaining and a mockery of the right to strike. We believe that the intention of the labour law, as we understand it, is to encourage collective bargaining and encourage settlements.

Second, it lengthens the strike or lockout situation because the employer doesn't have that extra impetus to settle, and third, because of the amount of violence that can be incited in that kind of situation.

Mr Offer: That was really basically the question that I wanted to pose to you. I still have a couple of minutes so I'll continue.

I noticed in your brief you spoke about your wish that there be membership lists provided in an organizing drive.

I know this wasn't part of your submission, but it was part of your summary of major points. I'll tell you, though, we've heard some suggestions about why these should be provided.

I have a concern with respect to confidentiality of workers, the whole issue of workers, male and female, single-support or not, having their names, addresses and a whole stack of confidential information being made known during an organizing drive. It has nothing to do with whether one can or cannot, or should or should not, organize. To me the issue is whether an individual, man or woman, working should have private and confidential information provided outside of his or her employ.

I'm wondering if you can share with us why this type of information should be made known.

Ms Lem: When you organize a workplace, and this is especially true of part-time workers but not at all restricted to part-time workers, there can be a lot of people who will appear on the company's list that the union may not know of because of the hours they work, because they work in a bureau or somewhere not in the main location. There can be a myriad of reasons.

We believe the list should be provided after a union has displayed a specified level of support, because ultimately the union has to sign up. In other words, a majority of the people who are employed there have to, in effect, vote for the union by signing union cards. If you looked at that situation elsewhere, such as in your own election, there's no requirement that every person in the province or in your riding vote. Here there is a requirement that a majority of the people in the workplace must in effect vote for the union by signing the card.

We're not saying that a union should just walk in and be able to demand a list, but we think that after showing a level of support the list should be provided, and we also think the privacy considerations of which you spoke can be dealt with in the legislation. The union does not need to know who's a single-support mother, necessarily know that sort of thing. What we're looking for is having accurate lists of the numbers of employees who work there.

Mr Jackson: Just to put a fine point on that one, I frankly feel there has to be some degree of protection and I'm a little nervous. Although I recognize the union's right to be able to contact employees, I have serious concerns about yet another example of us suspending somebody's civil rights. We're seeing far too many occasions of it, with employment equity coming, and now this request is a suspension of the civil rights of an individual to protect a certain amount of his or her privacy. Especially for women in single-parent, mother-led homes or for victims of violence it's a concern. It's a legitimate one. It's not a general legitimate concern for all members of society, but it certainly is, under certain circumstances, for women in particular. I'd certainly like to put that concern on the record because that's the concern I have about it.

I have two areas I want to explore in the limited time. One is that we heard a presentation this morning with respect to a certification approach in the Cambridge Reporter, which was filled with acrimony, violence and so on.

I want to ask you the direct question: Why is it that you allow—your union in that case and others we've heard of—phone-in votes that are positive to your ends but that you would reject notarized proxies that do not support your contention? Why is it that you undertake that kind of activity?

Ms Lem: Actually, we don't allow proxy votes.

Mr Jackson: Then why do you allow phone-ins? In the case this morning, 38 employees were present and 43 votes were counted.

Ms Lem: That's the contention of a particular employee who was anti-union, who acted as a strikebreaker during the strike and who is still trying to get rid of the union. That's another whole subject. But his unfounded contentions I don't think are—

Mr Jackson: But the facts before the labour board were that there was a disproportionate number of votes cast for the persons present. Are you saying that in your union on no occasion do you count votes unless the people are present?

Ms Lem: In my union we have no provision for proxy votes. I cannot recall that—

Mr Jackson: You answered that already. I'm asking if you've ever have a discrepancy.

Ms Lem: Excuse me. I cannot recall that ever happening during the 10 years I've been in this particular local or the 17 years I've been a member of various locals of the newspaper guild. Also, you should know that the Ontario Labour Relations Board recently, last month I believe, threw out another attempt by this employee and his group to decertify the union.

Mr Jackson: I think that is their right in this province.

Ms Lem: That is one of the things that was brought to the board, and the board, in its wisdom, obviously found that the allegations were unfounded.

Mr Jackson: You do not support secret ballots, I suspect.

Ms Lem: We have secret ballots in all our strike votes.

Mr Jackson: But if this legislation were to be amended, do you support secret ballots for certification? Why are democracy and its principles selective in this regard?

Ms Lem: I don't think democracy and its principles are selective in this regard.

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Mr Jackson: Wouldn't they protect people though?

Ms Lem: I think during an organizing drive—I've worked on several—employees well know the position of their employer. I'm a reporter and report on business at the Globe and Mail and I certainly know my employer's position on various things, including unions and how the company runs and so on. So first of all, employees already know what their employer's position is.

Second, you will find if you've ever worked on an organizing drive that organizing occurs when there is a

need for a union. It's a very tough decision for people to make and it's not one they make lightly.

Finally, I would say that when they sign the card, they are in effect voting for the union.

Employers, in the current law, are not allowed to intimidate, coerce, harass, threaten or fire employees because they choose to join a union, but that does happen. I organized the Metroland chain of newspapers owned by the Toronto Star. I had three reporters who were fired during that organizing drive. I fought at the labour board for three months and finally they were reinstated because the board found they were fired because they supported the union. So the company does intimidate and even dismiss people. We feel that if people have in effect voted for the union—

Mr Jackson: It's on that point I was asking. Wouldn't the secret ballot protect—

Ms Lem: No, the card is a secret ballot.

Mr Jackson: Not the strike vote. I'm talking about certification.

Ms Lem: I'm talking about certification too.

Mr Jackson: I consider there to be abuses on both sides. I'm not saying one side is wholly innocent in that regard. I'm simply saying that all citizens of this province could survive any fears of reprisal if their—just as my constituents don't have to worry, when they come in to ask for my assistance, if they say: "I know you know I voted against you, Mr Jackson. Will you help me?" That is a right, a democratic principle and I don't think an employer or a union should know who does or doesn't support them. I think the arguments for or against a union should stand on their own merits.

Ms Lem: But, Mr Jackson, when you sign a card, that is also privileged information which the employer is not supposed to have access to. It is in effect a secret ballot. To suggest, as you appear to be doing, that people don't know what they're doing when they sign a union card—

Mr Jackson: No, I didn't say that. I said protect everybody.

Ms Lem: It's a suggestion inherent in your question, the idea that people don't know what they're doing when they sign a union card.

Mr Jackson: No. I want everybody protected.

Ms Lem: Fifty per cent of our members are journalists who cover major political and economic events and I certainly think they know what they're doing when they sign a union card.

The Chair: I want to thank you, Ms Lem, and you, Mr Murdoch, for appearing here today on behalf of the Southern Ontario Newspaper Guild. We appreciate your interest and we appreciate your coming here to Queen's Park. We trust you'll be monitoring the bill as it goes through the committee process and trust you'll be keeping in touch. Take care.

Mr Jackson: Mr Chairman, I wonder why Mr Ferguson didn't ask this group the same question he asked the daily papers about the efficacy of their reporting when they asked rather offensive questions that—

The Chair: Darned if I know, Mr Jackson. Among my talents is not mindreading.

CANADIAN PAPERWORKERS UNION, REGION III

The Chair: The next group is the Canadian Paperworkers Union. Would they please come forward, have a seat, give us their names and tell us what their titles are, if any. We have until the hour. We want to make sure we save at least the last 15 minutes for questions and exchanges. Tell us your names, gentlemen, please, and your status with the CPU. Go right ahead.

Mr André Foucault: My colleague, who will be presenting the presentation on behalf of the Canadian Paperworkers, is Patrick Sweeney. He's the national representative of the organization. My name is André Foucault.

Mr Patrick Sweeney: On behalf of the Canadian Paperworkers Union, Region III, I would like to thank the resources development committee for allowing me the opportunity to appear before you today to express our views on Bill 40.

The Canadian Paperworkers Union represents some 21,000 workers in Ontario who are employed in the forest products industry, dealing with pulp, paper, lumber and paper-converting operations, the latter of which includes commercial envelopes, greeting cards, school and office supplies, corrugated products and folding cartons, as well as wallpaper and bindery establishments.

The wide variety of operations in which we have membership and their geographical location in this province give our organizations the strong basis upon which to formulate its views on the contents of this proposed legislation. It is in the spirit of representation, due process and the promotion of economic partnership that we advance the content of this brief for the committee's consideration.

As in society at large, citizens are legally and constitutionally entitled to representation before our courts, within our governments and before inquiries and commissions to protect their rights; so should they as workers in our province's plants, mills, factories, stores, mines and offices have access to representation in their dealings with their employer. Workplaces of this province cannot be viewed as standing outside the general framework of our society, but rather as an integral part of it.

Further pursuing the parallelism which exists between our society and its workplaces, it is also fundamental that all have access to due process. Decisions made unilaterally by employers can have far-reaching and serious consequences for the employees who are impacted upon by these decisions. Given these serious consequences, it stands to reason that in the absence of a formal procedure through which these decisions can be appealed or challenged, Ontario workplaces can well be repositories of injustice. In a civilized society, everything should be done that can be done to promote fairness for us in our place of employment. Unionization provides the only real mechanism which can advance this objective.

The future of our economy, our very ability to stay ahead of competition from this continent and beyond depends on a new partnership which must involve workers.

For working people, involvement can mean simply taking a blind lead from employers as in the past, but full representation as equals in dialogue between employers, employees and our governments.

Once again, unionization brings with it the mechanism through which workers can become not only equal but effective participants in the dialogue, which must be initiated and continued between themselves, their government and their employers if we are to rise to the challenges from our competitors.

The Canadian Paperworkers Union is dismayed at the mindless opposition which this bill has received from some segments of the business community. It is incomprehensible to us that this proposed legislation has become the battle cry for every fanatical employer or employer organization which prefers living in the past than change in accordance with the gradual evolution of our society.

In our view, this narrow and ill-conceived position tends to undermine our very ability to compete on the global market. To suppress this necessary and desirable evolution is to suppress our future itself. The opposition is certainly vocal, but cannot, in our view, reflect the mainstream of progressive and responsible employers of this province. At a different time, these opponents would have been on the front lines opposing the prohibition of the use of child labour, the right to vote for women, reduction in the workweek, workers' compensation legislation, public education, the Canada pension plan and other progressive measures.

We only have to look at the most vibrant European economies to serve as an example to us of the benefits which can be derived from mature corporate management in its dealings with governments and unions.

Eligibility: We praise the minister for having extended the right to unionize to a large number of workers who have been legally denied this opportunity. Once these barriers are removed, security guards, among others, would be eligible for union representation.

The committee should note that among the 11 labour jurisdictions in this country, the province of Ontario is the only that does not afford security guards the right to join any trade union. This exclusion was based on the fictitious belief by management that were security guards eligible for unionization in the union which represents the employees of a given establishment, such association would create a conflict of interest. Security guards, they argued, would have a dual loyalty, one to the employer and the other to the union and its membership.

It is inappropriate that people employed as security guards be discriminated against in this fashion. In practice, most security guards are recruited from the ranks of the unionized workforce, where they have already held membership for years.

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Our experience shows that in the provinces where we do represent people in the security field, concerns for divided loyalties are unfounded and in fact artificial. Our experience further shows that people take on positions of responsibility and exercise their obligations diligently.

Protection of workers during organizing campaigns: If the statutes of the province of Ontario provide workers with the right to unionize, as they do and as they should, it must follow that employees who exercise these statutory rights receive maximum protection from our laws.

The bill addresses the issue of unjust employer harassment and dismissal of workers who participate in an organizing drive. This proposed legislation does provide some additional protection to workers who are subjected to such unfair measures, and rightly so. It is shocking that workers are often fired or disciplined for simply trying to convince their coworkers they would be better off dealing with their employer collectively in a union rather than alone as individuals. Yet many workers who try to organize must live day in and day out with the fear of losing their livelihood. This is a clear violation of free speech, free association, and is directly opposed to the spirit of the Ontario Labour Relations Act.

This is a problem that the Canadian Paperworkers Union has faced in the past and it is one that we face today. We have organizing campaigns under way in Ontario at this time where workers are petrified of losing their jobs if their employer discovers they're attempting to join a union. This is particularly significant when unemployment levels are high and work is hard to find.

Admittedly, the act does presently forbid employers from unjustifiably disciplining or dismissing workers involved in an organizing campaign. In practice, though, unscrupulous employers can fire key organizers and not face the music for many months, by which time the campaign might fail in the absence of the key people. It is important that such tactics disappear so that workers are able to freely exercise their rights to associate and join a union.

Section 92.9 of the proposed bill contains provisions to protect workers, during organizing campaigns, from unjust discipline and dismissal. A union will be able to request an expedited hearing before the labour relations board, were it filed an unfair labour complaint under section 91 of the Labour Relations Act. Where a union requests an expedited hearing under this section, the hearing must begin within 15 days of the request and a board will sit on consecutive days until the hearing is complete. The board must render its decision within 48 hours of the completion of the hearing.

The proposed 15-day waiting period can be a long time in an organizing campaign and falls short of what the CPU would recommend. None the less, compared to the current process, which can take many months before reaching a solution, it is a significant step forward which we support.

Certifications: One area where we find the legislation quite disappointing is with respect to the support required for certification. The government has decided to maintain the current provision in the act which sets 55% as a level of membership support a union must have before it is entitled to automatic certification. This is truly unfortunate. CPU recently signed up 54% of the workers in a large, viciously anti-union plant in Ontario, yet was unable to obtain automatic certification. The intensity of the employer's anti-union campaign, replete with implied threats and unrealistic promises, doomed the vote to failure.

It is unfair to set up roadblocks to workers who wish to join a union, and the 55% rule constitutes such a roadblock. In addition, it is clearly unjust, since the majority of workers who have expressed their wish to join a union are denied being able to do so. The Canadian Paperworkers Union believes that if a simple majority of workers joins the union, certification should be automatic. This practice is currently in effect in Newfoundland, Quebec and in the federal jurisdiction.

We note that the legislation does lower the percentage required for a representation vote from 45% to 40%. We support this change.

Petitions: Let us turn now to the issue of petitions by employees who claim they do not want to be represented by a union. In our experience, in virtually every case, petitions are frivolous, employer-sponsored and invariably fail to prevent certification. Nevertheless, anti-union employers, who are well served by them since they provide a way to delay certification, demoralize newly unionized workers and often divide the workforce. The proposed legislation no longer permits petitions to be submitted to the board after the date the union applies for certification.

While this restriction constitutes a welcome change, the Canadian Paperworkers Union believes, for the aforementioned reasons, that petitions should not be considered by the board at all.

Anti-scab measures: The Canadian Paperworkers Union fully supports the amendments in Bill 40 which have as a purpose to restrict the use of scab labour. The use of scabs during a strike leads to an emotion-charged atmosphere, serious picket line confrontations and a weakening of the positions of workers. This has been a serious problem in the pulp and paper industry in the United States and is a major concern of ours. The changes proposed in Bill 40 go a long way towards preventing such conflicts in the future in Ontario.

Regrettably the bill does not go far enough towards equalizing the respective burdens of workers and their employer during a strike. Employers are still permitted to contract out bargaining unit work and to shift it to another location. Supervisors and non-bargaining unit employees who normally work in a struck location are allowed to perform the work of the striking employees. So while workers are deprived of their income, employers in many instances will be able to operate at something approaching their normal rate. We ask that the government amend the bill to correct these deficiencies.

We also propose that this bill be amended to direct the labour relations board to expedite any hearings that deal with complaints under this section of the act and that decisions be rendered promptly.

Conclusion: The amendments to the labour law of Ontario proposed in Bill 40 benefit the working people of this province. We believe the bill requires certain improvements. We congratulate the government on its resolve in proposing these new changes, for which we expect rapid passage in the Legislature.

We feel that the proposals contained in this bill will reflect the direction of our society in granting fundamental rights to the workers of this province to proper repre-

sentation, due process and a participatory role in a dialogue which will be so essential to the new economic partnership.

That is the end of our brief, Mr Chairman, but I'd like to read a closing comment to you. The committee should be aware that our union continues to study certain other sections of this bill and is in the process of reviewing the same with our legal counsel. We reserve the right to put forth additional positions before this committee at a later date when again we will appear before it. We may also choose upon the completion of this public hearing to address certain concerns directly with the government.

Mr Offer: In the time permitted, I'd like to raise one issue. But I'd also like to ask you, Mr Chair—and I'm not asking for a ruling at this time, but I certainly think that it has to be taken into consideration—where there are motions to be brought before this committee, first, when is the time that they can be brought forward? Second, when will we have the opportunity to be able to discuss those motions, without taking away time from the deputants making presentations?

I'm using this time which is allocated to our caucus to ask a question to bring forward this matter because I don't want to take away from either the deputation or the questions from other caucus members. But I believe that this is a matter of very serious concern because of some of the questions that have arisen over technical assistance from ministry staff. Having said that, Mr Chair, I would just note that I hope to receive some information from you as to how this committee can deal with the orders of its business as we proceed.

I noted from the final comment you made that you wanted some additional time, potentially, to come forward before this committee, with which I have absolutely no problem whatsoever. I would like to give notice, Mr Chair, that I will be placing a motion once more before the committee that at this hearing we ask that extra time be given so that we are able to listen to all those people who want to not only come before us but also who may wish to deal with certain matters that have arisen as a result of their representations.

The Chair: Thank you for the notice.

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Mr Offer: Have I run out of time because of that?

The Chair: No, we're going to give you a couple of minutes. But to respond to your query, as with the motion that's currently on the floor, made by the member of the Conservative caucus, the appropriate time, in my view, is at the end of the day's business when all of the participants have been heard and had their time allotments effectively utilized.

Mr Offer: Thank you.

The Chair: We're going to be here till 9.

Mr Offer: Thank you very much. I will be distributing the motion to be heard at the end of the day.

Thank you for your presentation. As you speak about some of the concerns about organization and organizing drives, could you please share with us what your position

is in the area of giving workers the right to express their opinion in a secret ballot and the right to be fully informed as to the issues around an organizing drive.

Mr Sweeney: I'd like to defer to my colleague, if I may, on that.

Mr Offer: Sure.

Mr Foucault: Our union affords prospective members full knowledge of our organization. Our constitution is our biggest organizing tool; that is the first document that is placed in the hands of employees who are considering membership in our union, so that they fully understand the structure we have to offer them and can question any part of the constitution.

I assure you that our constitution contains in it the salaries of our officers and everything else; it's a wide-open document. That's what we do; we're wide-open with that and very open to all kinds of questions with respect to that. As far as a secret ballot vote and certification matters are concerned, 50% plus one is the majority and is in itself a secret ballot, a determination of the wishes of the employees.

We view this as a parallel perhaps in the legal profession. If I retain a lawyer to act on my behalf, or if one of us does that, the courts don't go beyond being satisfied that there is a contractual arrangement between the lawyer and the client, and that's enough. We don't need to have the courts protect individuals against lawyers. We accept that the relationship develops freely between lawyers and their clients, as it does between unions and prospective members.

Mrs Cunningham: I'm interested in your union, the Canadian Paperworkers Union, Region III. I'm wondering if you have grown in membership in the province of Ontario or whether you have had more members in the past.

Mr Foucault: I think it's fair to say that, like most unions, our membership has been impacted upon by the recession that we are experiencing in this country. Therefore I would say our numbers have declined, although we're talking about layoffs of individuals on a temporary basis mostly, who continue to have recall rights in their place of employment and continue to have access to our representation, grievance procedures and so on. We continue to act on behalf of these people. Certainly the employment level may be down, but they still continue to be members of our union.

Mrs Cunningham: Okay. The reason I ask is that I've just spent some time in the Maritimes, and they seem to have more members of your union down there now than there have been in the past. I'm just wondering if the industry is growing in the maritime provinces as opposed to in Ontario.

Mr Foucault: I don't think those numbers bear out. I believe the membership in the Maritimes is pretty stable.

Mrs Cunningham: Is equally low or low as well?

Mr Foucault: Yes. It's about 12,000 and has been for some time.

Mrs Cunningham: Okay. I just thought it was growing, and that's why I wondered about that, given your presentation today.

You talked about the battle cry on behalf of some of the employers. I want you to know that the one I get in my office more frequently—and it's not just from the business community, but from other communities like representatives of municipalities and hospitals; today we heard from school boards—is the tremendous concern about worker replacement, that part of the legislation and how in fact it could—today we were told it would literally close the schools down if it was one union. Some school boards have as many as 16 different unions, and this wouldn't allow anybody to replace workers, whether it be bus drivers or whether it be substitute teachers or whatever.

I thought they had rather legitimate complaints. So I don't think everybody is coming before the committee and presenting unreasonable positions or concerns. I just wondered if you knew about two or three that I've just mentioned and feel they do perhaps have a legitimate concern.

Mr Foucault: It's all part of the ongoing debate around this legislation. People are free to express their concerns. However, if a society is going to be consistent, there are times when granting rights is easy to do and there are times when it's difficult to do, but in the end, if the rights are worth granting, which we believe they are, then it should be done as consistently as possible. It's in the principle of the right that we base our argument. I'm not saying it's going to be easy for all.

Mrs Cunningham: Are you talking about the right to be a member of a union, when you're talking about rights?

Mr Foucault: Whatever rights this legislation, when enacted, would bring to workers. I'm talking generally, not just the right to belong.

Mrs Cunningham: Their concern specifically was the right to have a replacement worker either drive a bus or teach a child, where the itinerant teachers or the substitute teachers are members of a CUPE union. They're concerned that they can't replace them with regular teachers, as they can now.

The Chair: Mr Fletcher, did you want Ms Cunningham to have some your time?

Mr Fletcher: No.

The Chair: Do you want to reply to Ms Cunningham's point?

Mrs Cunningham: I wondered if you thought that was a legitimate concern. I think your response was that you think everything should be consistent. There are some examples here where we're very concerned about the implementation of this legislation across all sectors. We wondered if you'd given that any consideration or if you even knew about it in this regard.

Mr Foucault: Certainly, if we aren't impacted upon as working people with this issue, we are as citizens and parents and so on. I'm saying, as a citizen in this regard as well as a working person, that if there will be rights afforded to people because it's more a right to do it, then we as a

society should be prepared to accept the downsides of granting these rights as well as recognizing the upsides.

Mr Fletcher: Thank you for your presentation. Just a few things. We've heard from a lot of groups that have come in that they liked the legislation, they liked the proposals and they praised the Minister of Labour and this government for introducing this legislation. We've also heard from groups that are saying this legislation tips the balance of power, that it isn't a level playing field.

In your experience as far as organizing drives, as far as signing up members, whatever you do during negotiations, is there a balance of power? In your experience, is this tipping the balance of power or is this creating a level playing field?

Mr Foucault: Generally and then to the specifics: generally the balance of power has to be perceived not between management and union but between shareholders and union, because that's who in fact management represents, the shareholders.

For example, during a labour dispute, the workers are without income; in a sense, no bread is coming to the table. The shareholders, on the other hand, continue to have bread coming to the table because their investment in that plant is not generally their sole source of income. There's a more direct investment on the part of the worker and a more direct stake in that employee's job than perhaps for a shareholder in a company. When you're looking at that playing field, we have to keep in mind who is juxtaposed to whom here, and it is the shareholder being juxtaposed to the worker. The management people are basically an instrument of the shareholders in this conflict.

Specifically, with respect to organizing, there's no question that the power of the employer, just the implied threat or the perceived ability to discontinue the gainful employment of an employee for exercising his rights under this act, as it now stands or will when this is eventually enacted, is a deterrent towards the exercise of those rights; that's got to be curbed.

The labour relations board doesn't hear all the horror stories, because the ones that are heard before the board are the ones where we weren't able to establish a clear violation. We go before the board and we have support for our position and we advance it to the best of our ability.

In the ones where we have a clear violation, the horror stories, very seldom does someone get before the board, because our attorneys on our behalf or ourselves on our own behalf will contact the employer and say, "Here are the facts we have." We expose that support that we have. Generally they will negotiate with us a settlement to those allegations because we have the support.

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So the worst-case scenarios of employees being fired are very seldom heard before the board, being told so by the employer in front of witnesses, unashamedly, of people who suddenly are caught up in a layoff because of an alleged lack of work. We know full well—and we can demonstrate—that somehow the cutback reached into that department simply to remove people from the campaign and access to fellow workers. Another example I could use

is when an employer literally paid an employee to stay away to avoid a subpoena served on that employee.

So these are things that, when we can prove them, of course, the employers will suddenly back off; they will suddenly negotiate with us. We can prove it directly.

The Chair: Thank you. We've got to move on, gentlemen. Thank you very much. The committee expresses its gratitude to you and the Canadian Paperworkers Union for your interest, for your participation today, for your submission and what I trust will be ongoing contact and monitoring, on your part, of the legislation.

Mr Foucault: Thank you for the committee's time, Mr Chairman. Take care.

UNITED PLANT GUARD WORKERS OF AMERICA

The Chair: The next participant is the United Plant Guard Workers of America, if they'd come forward, seat themselves in front of a microphone and tell us their names and titles. We've got half an hour. Please keep at least the last 15 minutes for exchanges, dialogue and questions. Go ahead, please.

Ms Denise Sylvestre: Good afternoon. My name is Denise Sylvestre. I'm an organizer for the International Union, United Plant Guard Workers of America. I'm also president of Local 1956 of the United Plant Guard Workers. I'm employed as a security guard with an agency company.

United Plant Guard appreciates getting this opportunity to appear before this committee to make submissions with respect to Bill 40 and reforms to the Labour Relations Act. The International Union, United Plant Guard Workers of America, endorses and supports the vast majority of the reforms being proposed by the government in Bill 40. We feel that the changes being proposed, particularly in areas such as access to third-party property for the purpose of organizing, the elimination of petitions in certification applications, improvement to successor rights provisions and restrictions on the use of replacement workers are a long time coming and very much needed to allow Ontario workers to have access to collective bargaining.

We have concerns, however, about certain proposed amendments. We oppose the proposed amendment to section 12 of the act. We have doubts that section 31 of the bill, as presently drafted, will accomplish its intended purpose. Finally, we are requesting that the government enact a proposal to provide unions with access to employer's lists of employees for the purpose of organizing.

The UPGWA is the trade union which has represented security guards in Ontario since 1958. It is a guards-only union; it represents security guards and only security guards. The union was first formed in 1948 in the United States, where it today has some 25,000 members. The union has approximately 2,500 members in Ontario. Most of the bargaining units represented by this union are small and consist of between 20 and 25 employees. Our largest unit has about 270 members.

In Ontario we represent guards employed by employers such as General Motors, Chrysler, Ford, Alcan, Ontario Hydro, the Ontario Jockey Club, the Art Gallery of Ontario, Burns Security, Carecor Security, universities and

major hospitals, among others. Additionally, we represent security guards in Quebec and New Brunswick.

In the past two years the union has been very actively organizing and has grown by some 40% in Ontario, adding some 1,000 new members. Most of these new members are agency guards, security guards who work for a security agency as opposed to in-house guards directly employed by the company to whom they provide security services.

Our union has a full-time organizing department and has had four separate organizers active within Ontario in the past year.

In the collective agreements we have negotiated we have been able to win substantial improvements in wages, benefits and working conditions for our members. For example, our collective agreement with Chrysler provides a comprehensive health care plan, life and disability insurance, an income maintenance plan, a legal services plan and a supplementary unemployment insurance plan. Our collective agreements with the agencies we have organized provide for wages in excess of minimum wage and a full range of benefits, including paid sick leave, medical and dental plans, free uniforms and equipment and health and safety protection. That's a big plus, the health and safety; we have no health and safety without our unions.

As a guards-only union we recognize and are able to respond to the unique interests of security guards. By negotiating only on behalf of security guards we ensure that the specialized needs and interests of guards are addressed in collective bargaining. We come before you today as the voice of organized security guards in Ontario.

While we support the vast majority of the amendments to the act being proposed in Bill 40, there are three areas in which we feel changes are needed. The first of these is the right of unions to obtain lists of employees during organizing. We urge the government to amend Bill 40 to provide such a right to unions. Our experience in organizing agency guards has taught us that without such lists, we often cannot even find the people we are attempting to organize. Without these lists, some people will never have the opportunity to join a union. The details of our submission in this regard are found on pages 5 and 6 of our written brief.

The second area in which we feel changes must be made to the proposed amendments is the area of successor rights in building services. We strongly support the government's intention in amending the act to provide successor rights to employees who provide cleaning, food and security services under contract. The lack of successor rights for these employees has meant that in the past they did not have any real right to collective bargaining. Our concern is that the amendment, section 31 of the bill, is drafted too narrowly to accomplish this purpose. We are proposing a rewording to ensure that the government succeeds in extending successor rights to these employees. Also, details of our submission will be on pages 6 and 8 of our written brief.

Mr Lewis Bryant: My name is Lewis Bryant. I'm an organizer for the United Plant Guard Workers and unit chairman at the Alcan Rolled Products Co in Kingston. I am employed there as an in-house security guard. I'll

speak to you about the proposed amendments to section 12 of the act.

Section 12 of the act currently provides that security guards cannot be placed in the same bargaining unit as non-guards and that a trade union which represents non-guards is not entitled to be certified as the bargaining agent for security guards.

The proposed amendments of the bill would permit unions which represent non-guards to represent guards. The amendments would also place guards in the same bargaining unit as non-guards, unless the labour board were to find that a conflict of interest would arise due to the guards being required to monitor other employees. If such a conflict were found, the board would be required to place the guards in a separate bargaining unit, but could not require that the guards be represented by a different union.

The rationale which underlies section 12 is that if guards are placed in the same unit or union as the employees there would be a conflict of interest between the duty of the guard to his or her employer and his or her allegiance to union brothers and sisters. The labour board has ruled that in order for section 12 to apply to any group of employees, the conflict must be a real one. Conversely, the labour board has held that when no conflict exists, section 12 does not apply. The employees in question can be placed in the bargaining unit with other employees and represented by any union.

The board has found that an employee is not a guard simply if he or she is uniformed, wears a badge, carries a weapon, is licensed as a security guard or designated as a special constable. This does not mean that section 12 applies.

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Similarly, if an employee only guards an employer's property against third parties but not against other employees, section 12 will not apply. As a result, armoured-car guards are not guards under the act and may be represented by any union.

Section 12 only applies to a select group of employees, those who have responsibility for monitoring other employees and who would be in conflict of interest by being placed in the same bargaining unit or being represented by the same union as other employees.

The government, in both the discussion paper and the fact sheets accompanying Bill 40, states that conflicts of interest do not exist so as to require guards-only unions. It bases this claim on undisclosed research of other provinces by the Ministry of Labour.

We reject this assertion. Section 12 only applies where there is a real conflict. In situations where there is no conflict, the labour board has said section 12 will not apply. We disagree with the Canadian Paperworkers Union, which you just heard.

We are here to say that, as security guards working in the field, such conflicts of interest do exist. They are very real. If the unions which are not guard-only are permitted to organize security guards, security guards are going to be placed in a very difficult position—I know; I've been there. We will face substantial conflicts between our duties to our employers and our allegiance to our union brothers and sisters.

It is a guard's job to observe and monitor other employees. That includes conducting searches of their clothing, vehicles, lockers and lunch boxes, for the purpose of protecting the employer's property against possible theft and vandalism by these employees. We are required to report to the employer any misconduct that we may observe. We may be required to give evidence on behalf of the employer if discipline proceedings against that employee result. Our responsibility to observe, record and report employee misconduct continues and is heightened during a labour dispute. Simply put, we are cops in the workplace.

In order to properly do our jobs for the employer and to avoid risk of discipline or dismissal we must observe, monitor and report misconduct by each and every employee. From experience, to do this we must maintain a certain distance between ourselves and the other employees. We tend to have very little to do with other employees. We have separate lunch areas and locker rooms and we cannot allow friendship or some common interest to interfere with our job.

If we are placed in the same bargaining unit as other employees, then this separation will be hard to maintain. We will be under pressure, spoken or unspoken, to look the other way when an infraction involves a union brother or sister. This pressure will be even more noticeable when the misconduct may be in the interests of the bargaining unit, ie sabotage on the eve of a strike. We will be placed in a no-win situation. We either risk discipline and dismissal by the employer or we are disloyal to our union brothers and sisters.

The conflict will not be resolved by placing security guards in a separate bargaining unit. We are experienced and devoted trade unionists. If we are members of the same union as other employees of our employer, we will face conflicts and pressures, regardless of whether we are in a separate bargaining unit. In order to do our jobs as guards effectively, workplace solidarity can extend only to our relationship with other guards and no further.

These conflicts and pressures will exist for both agency and in-house guards. As agency guards we work in a variety of different workplaces where other employees are represented by a number of different unions. If the unions which represent non-guards are permitted to represent agency guards, we will wind up working at sites where we will monitor other members of our own union. As such, we will face the same conflicts faced by in-house guards.

Section 12 serves to protect us from these conflicts and pressures. We see section 12 as a legislative protection, not a legislative limitation upon our rights.

Security guards are not the only employees in Ontario prevented from joining unions who represent any other type of employee. Teachers and members of a police force also face restrictions of this nature.

The Police Act recognizes that if police officers join unions representing non-police, conflicts of interest may result. Security guards are the police in the workplace. The same kinds of conflicts exist. We are more closely related to the police officer than we are to the factory worker. The same legislation protection that applies to the police ought to apply to us.

Ms Sylvestre: We are aware that the government is concerned about the low level of union representation of security guards in the province. So are we. This is why we have been so actively organizing in the past few years. It's not the in-house guards who are underrepresented by unions; it is the agency guards. This has far less to do with section 12 than it does with other weaknesses in the act.

We have learned by experience that it is particularly difficult to organize agency guards. Guards employed by agencies are employed at numerous different work sites. We have no access to employee lists to even find these people.

Agency guards also recognize that they have high degrees of vulnerability in their jobs and they are easily replaced. I can tell you that's how they feel because I am an organizer. At 3 o'clock in the morning guards are saying: "Get out of here. The boss is going to see you and I don't want to talk to you." I mean, we've had people hiding under the desk, sending nurses out at hospitals because they're scared to death because I'm even near them.

If we do succeed in organizing them and obtaining improvements in wages and conditions of employment, their employers may be undercut by non-union agencies. When their employer loses contracts, they lose jobs. The result is that agency guards are underrepresented and underpaid.

These problems will not be resolved by eliminating section 12. Allowing guards to join any union does not eliminate the problem. One of Canada's largest unions represents security guards employed at certain airports under federal legislation. Despite the size of the union, they have only succeeded in negotiating a collective agreement paying 60 cents an hour more than minimum wage. Our contracts are better.

Other provinces do not have equivalent sections to section 12. Yet, to our knowledge, only in Quebec are a significantly greater number of agency guards represented by unions. Again, this has little to do with section 12. It is a result of what is known as the "decree system" whereby collective agreements are extended to unorganized workers without the necessity of certification.

Increasing representation among agency guards will be done through improvements to successor rights provisions, granting unions access to employee lists, granting effective and quick remedies for dismissals and discharges during organizing campaigns, eliminating petitions in certification proceedings and prohibiting the use of replacement workers during a labour dispute.

We fear that elimination of section 12 will in fact harm security guards. It may cause more employers to eliminate in-house guards in favour of agency guards in the hope of eliminating the conflicts of interest which will be created by having guards and non-guards represented by the same union. The result will mean that there will be fewer in-house guards and more hard-to-organize agency guards working for lower wages without the protection of unions, a result contrary to the government's entire purpose in enacting Bill 40.

Conclusion: We strongly urge the government to re-draft section 31 of the bill to ensure that it accomplishes its

intention of extending successor rights to employees working in the building services area, to amend Bill 40 to give unions engaged in organizing access to the lists of employees and to amend Bill 40 to leave section 12 of the act in place and provide for guard-only unions and bargaining units.

We endorse and strongly support the other proposed amendments to the Labour Relations Act in Bill 40. Collective bargaining works well for those who have access to it. With these changes, security guards will have that access.

The Chair: Thank you. Ms Cunningham, three minutes, please.

Mrs Cunningham: Thank you very much for appearing here today. You've certainly given me some information that I wasn't aware of. I'm just wondering whether you would expect that this committee would bring forth amendments as it sees fit to be discussed during the clause-by-clause or whether there are sections of this bill that you feel would be worthy of some kind of further discussion.

We've had a number of people say to us there will be new—new information has been brought to light. You've certainly brought some to me today that I'm going to consider. We have had many requests to appear before this committee for some ongoing discussions. It's a very confusing piece of legislation for many of us.

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Mr David Wright: My name is David Wright. I'm Canadian counsel to the union. I don't feel it's our place to direct the Legislature in its proceedings. We certainly appreciate the opportunity we've been given to make submissions to this committee and to make submissions to those people who will be deciding this bill. We hope that government and opposition members alike will hear what we've had to say today and propose the necessary amendments to accomplish the aims we think are needed.

Mrs Cunningham: Could I ask you, with regard to some new information that we got today from a group of school boards that are very concerned about not being able to use replacement workers: Specifically, the example they gave was that if the bus drivers went on strike or if the itinerant teachers went on strike, with this legislation they couldn't replace the bus drivers, and therefore the students wouldn't get to school as they can now, or, in the case of occasional teachers, the regular teachers couldn't take their place.

These are the kinds of things we're hearing for the first time, and there may be some differences across different sectors where this bill ought to be applied. Would you have any opinion on that at all?

Mr Wright: We definitely strongly support the government's initiative to place limits on the use of replacement workers. We think it's absolutely crucial to allow unions, including our union, to resolve our problems in the workplace through the mechanism of collective bargaining. The result is like any strike that currently exists: it places some hardships on parts of the public, hardships that exist currently when a strike happens. It will exist with replacement workers, but we think in the long run limiting

the use of replacement workers in fact will mean fewer strikes in the province and less disruption to the public.

Mrs Cunningham: That's probably based on the information that you've been given with regard to Quebec. I'm not sure, but certainly their track record doesn't prove that at all.

The Chair: Do you want to respond to that?

Ms Sylvestre: I myself feel that if that anti-scab law was enacted, it would bring the people to the bargaining table and resolve their problems rather than allow a labour dispute to happen. It would bring things on a more even keel as far as I'm concerned.

The Chair: Thank you. Ms Murdock.

Ms Murdock: I'm sure as security guards, not having replacement workers would make your job a lot easier in many instances. I just want to ask about something that you've talked about in terms of agency guards—I guess I would call them "contractual" guards, which would be the same as agency guards. Correct?

Ms Sylvestre: Exactly.

Ms Murdock: And managerial guards?

Ms Sylvestre: In-house.

Ms Murdock: In-house guards. I didn't understand the differentiation before, and I'm still not totally clear on how each group negotiates. I know that one group is under OPP supervision or monitoring and the other group isn't. But one of the suggestions that was made to us in an earlier presentation was the whole concept of industry-wide bargaining. You didn't get into that in your document, but I was wondering if you would care to comment on this.

Mr Wright: We didn't directly address the question of industry-wide bargaining. You're correct. We do, however, mention in our submissions to you the fact that, as far as we know, Quebec is the only jurisdiction where you see a significantly greater number of agency guards organized. That is because they do have a form of industry-wide bargaining, the decree system. We think that's been the reason why in Quebec, security guards, and particularly security guards who work for agencies, have been able to enjoy the right to join unions and enjoy the right to bargain collectively.

Ms Murdock: If agency guards were allowed to join any other union, any local or any particular bargaining unit, would that not resolve some of your concerns in regard to what you were saying earlier in terms of not being so unionized now?

Ms Sylvestre: No. Actually I feel that if security guards were allowed to join any union, it would be an injustice to security guards. I myself want to be represented by a union that represents security guards, and represents security guards in Ontario, not necessarily—I feel, like my friend Lewis said, that we are more closely related to the police officer than we are to the factory worker.

With joining any trade union—we are agencies, so we move from this factory to this factory to this factory. We're taken from this place and put over here during a labour dispute. We're just shifted all over, and we're bound to run

into either being in the same bargaining unit or the same union as the people—and I don't want to have to deal with the question of: Do I do my job or do I turn in my brother or sister?

The Chair: Mr Ward, just a few seconds.

Mr Ward: Just briefly, the critics of Bill 40 say they want things left alone because it's a level playing field as far as employer and employee relationships are concerned, as far as organizing is concerned. Yet we're hearing mounting evidence that in fact it is not a level playing field, that there are tremendous obstacles for employees to make the choice of whether they want to join a union or not.

The Chair: Point well made.

Mr Ward: You alluded to some—

The Chair: Mr Eddy.

Mr Ron Eddy (Brant-Haldimand): I hate to interrupt Mr Ward. I'll pay for that.

Thank you for your presentation. I note particularly, and agree with, your views on section 12: to amend the act and provide for guard-only union and bargaining units. I think that's awfully important. But I want to ask about page 14, the paragraph under (D), where you make the statement, "We are aware that the government is concerned about the low level of union representation of security guards in the province." Where did that come from and what does it mean? Why is it here? Can you comment on that point?

Mr Wright: I think the government, we feel ill advisedly—one of the rationales they have advanced for eliminating section 12 is that it will increase the level of representation among security guards in the province. As I say, we don't agree that will in fact achieve the result that is sought, but we, I guess, learned this through discussions with the government and through the fact sheets and background papers that were delivered with respect to Bill 40 and the discussion paper.

Mr Eddy: Quite startling.

Mr Offer: I have one question. When I read the provision in Bill 40, it speaks about a conflict of interest. I think it's clear from your presentation that you believe there is a conflict of interest. Bill 40 is putting that up for discussion, as to whether there is a conflict of interest, but you, in your professional capacity, believe that is an issue where, from your experience, there is a conflict of interest.

They speak about the guards in a bargaining unit monitoring employees. I note in your presentation that you don't limit it to just employees. It's not just employees that you monitor, but rather you also monitor and protect property. I think there is a hidden issue here. This issue of conflict that you've made very clear is made even clearer if we take into account the issue of property. Can you share with us whether it is your job just to monitor employees, or whether there's some sort of monitoring of property which you do?

Mr Bryant: Yes, and in that are management people as well. We check them when they come in and out, so it's not just the workforce but management as well. We can't really be on management's side too. As was said, we're the

cops. When we go through on our rounds as security guards, certainly on a weekend when the employees are not working, with all the machinery and stuff, we have to report to someone. If we were just to turn our eye because maybe a plumber would get a job and it could be worse or whatever—there is that conflict. It doesn't matter where you stand. You're sort of in between; you're sort of on your own.

The Chair: I want to thank the delegation from United Plant Guard Workers of America for coming here and expressing their views so eloquently. We appreciate your interest and trust that you'll be keeping in touch. I want to note that we're especially pleased that you brought your lawyer, David Wright, with you. His reputation as a labour lawyer, I tell you, extends far beyond the city limits of Toronto, so we're especially pleased to see him here. Thank you, people.

1530

ONTARIO GOOD ROADS ASSOCIATION

The Chair: The next participant is the Ontario Good Roads Association. Please come forward, and tell us your names and your titles. Please try to save the last 15 minutes for questions and dialogue.

Mr Leonard Rach: Mr Chairman, members of the committee, I'd like to thank you for the opportunity to appear before this committee on behalf of the Ontario Good Roads Association. My name is Leonard Rach. I'm second vice-president of the association, and I'm also director of engineering for the Metropolitan Toronto transportation department. With me this afternoon is Diana Summers, policy adviser for OGRA.

For your information, OGRA represents over 750 municipalities across Ontario. Our members range from small, rural municipalities to the municipality I work for, Metropolitan Toronto, and we speak on behalf of and with the support of our membership on a variety of roads and transportation issues.

We recognize that amendments to the Ontario Labour Relations Act are important to the government, but they must be pursued in full awareness of their impact on the sector of which OGRA is a part, the broader public sector. A great deal of attention has been paid to the anticipated impact of the proposed changes on labour and the business and private sectors. We believe that additional consideration is required to determine the impact on the provision of critical municipal services.

OGRA, along with a number of other public sector organizations, including the Association of Municipalities of Ontario, the Municipal Electric Association, the Association of Municipal Clerks and Treasurers of Ontario, the Ontario Hospital Association and the Ontario Urban Transit Association, met with the Minister of Labour and his officials to express our concerns with the discussion paper and Bill 40 in particular. We as a group believe that as providers of critical services, our concerns were not addressed in the discussion paper. While some adjustments have been made, Bill 40 still does not adequately meet these concerns.

I'd like to comment at this time on two specific concerns OGRA has with Bill 40.

With respect to replacement workers, OGRA believes that during labour disputes, municipalities must be able to continue to provide critical services to the public. This includes roads that are safe and dependable for the travelling public. People expect and require a road system upon which they can depend for such basic needs as food and travelling to their place of work. Obviously, safe and dependable roads are also required for emergency vehicles, school buses and transit vehicles as well as commerce.

Members of the committee will be aware that the discussion paper was silent on the issue of the use of specified replacement workers. However, subsections 73.2(2) and (3) of the legislation allow for the use of specified replacement workers in certain situations.

OGRA seeks clarification on whether municipalities and their road authorities are to be included under this section. There are many variables in the declaration of an emergency concerning roads, such as weather and perhaps the length of a labour dispute. It might also include the failure of some critical elements of the road system, such as our traffic control signals, and our mandate to keep bare pavement available for the travelling public under winter maintenance conditions.

With respect to location, it is also unclear from the legislation what is meant by the terms "location" and "place of operations." A municipality usually has a number of locations or sites, including a head office and several work yards. We feel that Bill 40 is unclear on whether municipal managers can be deployed to various sites within the municipality during labour disputes. In the past, many municipalities have used replacement workers from their management staff to carry out the critical essential duties of the union staff to ensure safe roads during a labour dispute. In some public works departments, there is only one management employee on staff. Municipalities need clear authority to continue to use management personnel throughout the municipalities' operations during labour disputes.

I've limited my comments this afternoon to those concerns dealing exclusively with road operations within a municipality. Other public sector and municipal groups will, I know, speak to the broader issues that concern municipalities and their need to provide such essential services as electricity, water and sewage.

OGRA was encouraged that some of its concerns were dealt with in Bill 40, although, as you can see, there is still some confusion among municipalities regarding the intent of the legislation and its impact on municipal operations.

I'd like to thank you for the opportunity for allowing our organization to speak to you on this important issue. Municipalities have legitimate concerns with the proposed legislation and we welcome discussion such as this. We wish you well in your deliberations.

The Vice-Chair: Thank you very much. Questions?

Mr Ward: I'd like to thank you for your presentation on behalf of the Ontario Good Roads Association, an association I know is very well thought of throughout, I be-

lieve, Ontario. I know my own municipality is a member, the city of Brantford, and I believe we make good contributions, as far as our municipality is concerned, to the association.

Your primary concern dealt with the issue of replacement workers and the need for clarification on the intent of the legislation, so I'm assuming that, from the Ontario Good Roads Association standpoint, you don't have any real concerns about the updating of the labour act except as it pertains to the operations of your particular association and roads, that your prime concern is the replacement workers.

I notice you focused on the emergency situations that may occur during a regrettable labour dispute. If you look at the bill, subsection 73.2(3) allows replacement workers, with a procedure for that to kick in where there is: "(a) danger to life, health or safety; (b) the destruction or serious deterioration of machinery, equipment or premises; or (c) serious environmental damage." Those should cover that concern from a safety standpoint; ie, if there's a wash-out due to a severe storm, the process is in place, according to the bill, to allow that to be fixed. I think that is your prime concern, the health and safety of the public, of the good citizens of my community of Brantford, and I think that should deal with your concern.

Mr Rach: It's not only the sporadic concern, for example that a stop sign has to be replaced, but you get into a winter storm condition where you have to provide a certain amount of salt on the roadway or a salting and plowing operation to keep the pavement bare. Essentially it requires, in my estimation, an ongoing commitment by replacement workers, and in most cases municipalities supply the replacement workers in the form of management personnel.

1540

Mr Klopp: Along those lines, in Huron county—I come from Hay township—there's three or four road people working. I think of Stephen and West Wawanosh; they don't have unions. We do at the county level. The workers have chosen to organize, and we've had good relationships. Many of my friends work for the county; of course we always joke about how hard we work or how hard we don't work. I think one of the things is that they've worked in cooperation with their employee, the elected officials. In fact, earlier today we had a submission from the engineers, Local 793. They suggested the replacement worker thing is a situation that's dicey for both sides.

My friends who live in Zurich or in Hay township who work for the county also ride the roads. I think our people have it in the summertime, so if there are any disputes they don't have the maintenance problem like they would in wintertime. At the same time, it frustrates them, because they don't want to be seen as hurting even themselves going up the road.

The point is that they suggested that we promote through this bill the idea of having you, the managers—the owners, if you will—and the workers, if they choose to unionize, get together and work out these things on a one-to-one basis through some kind of committee so that you

and they, who are in the community, can work together. Bill 40 does have a provision that we're trying to get advisory committees working, management and labour. I asked them if this is something that should be expanded to deal with such issues, because local people live in the community; they don't want to be labelled as hurting themselves. I think I'm going to be pushing that and I'd like your opinion on it.

Mr Rach: Thank you for your support on pushing that. Where we're coming from is essentially that we're after a clarification of the wording so that there doesn't appear to be any doubt for municipalities once Bill 40 becomes law. We don't want to get into the situation where we're hamstrung after the legislation is cast in stone.

Mr Eddy: Thank you for your presentation. Having been subjected to vocal concerns expressed by elected councils in several areas regarding the same concerns, I certainly want to emphasize it, and thank you for bringing it forward.

You mentioned traffic signals, and I think that's a very important part too. Bare pavement is certainly very important in many areas. Not my own, of course; we're used to not seeing bare pavement most of the winter. But I think it's got to be worked out much beforehand, before the legislation takes effect, because there are so many concerns of municipalities, water services and sewer services as well as the roads and transportation facilities. It's really important to have it in place and to know what you can do before the need to do it takes place. That's really essential. I know we'll be hearing from some of the other associations in this regard. Things need to be put in place long before. I agree with your concerns. There will be many of them.

Mr Rach: To draw on another analogy, in a municipal strike our works department handles the supply of water and sewage with management staff. This, in my estimation, is the use of a replacement worker. During a municipal strike, how can you tell the population of your municipality, "You can't turn on the water tap" or "You can't flush"?

Mr Eddy: I know elected people are always ready to help out in situations like this, but you might not want them out there.

Mrs Cunningham: I was interested in your comment on page 2, at the bottom of the second paragraph, where you say, "Additional consideration is required in determining the impact in the provision of critical municipal services." Are you aware of any impact studies that have been done on any of the services you have mentioned in the following paragraph to that?

Mr Rach: I'm not aware of any specific impact studies at this time.

Mrs Cunningham: So we're talking here about withdrawal of services or work stoppage that could affect members of other unions within the same municipal offices, but you're not aware of any impact studies or any examples that would be helpful in this regard.

Ms Diana Summers: It may be that the Ministry of Labour did them. There were people looking only at the municipal aspects of the legislation, we understand, and we're given to understand that impact studies had been done but we haven't seen them.

Mrs Cunningham: So you think before any of this was put forth with regard at least to your concerns, because you did have discussions, that somebody somewhere within the ministry knows about some impact studies. Would that be your understanding?

Ms Summers: Yes.

Mrs Cunningham: That's the feeling you were given?

Ms Summers: Yes.

Mrs Cunningham: We could put a request through, Mr Chairman, if you will right now, so that we could have impact studies that would be done on any of the services listed on page 2 in paragraph 2, or it could be 3, depending, but you can see the list of services and perhaps we could have them before the committee, because I'm not aware of them either.

I also would like to commend you on coming forward to draw some of your concerns to our attention. Given the concerns of, I think, everybody, because we've even heard of concerns of members of unions—the government purports to believe it is representing them fully and has addressed all of their concerns, but in fact we have had some concerns from union members as well—and given the seriousness of this bill, you should also be aware that we've got I think over 1,000 more applications for presentations before the committee. I think I'm right on that, Mr Chairman. Am I correct?

The Vice-Chair: Somewhere in the neighbourhood of 1,000.

Mrs Cunningham: Yes, maybe a bit more than that. Perhaps we're going to be looking at extended hearings. There's no doubt in my mind that we need some better information. But given all these concerns, I was wondering if you would think that it would be appropriate to have, separate from this, at the end of the committee hearings, some tripartite discussions with the business community, certainly the government, labour and other individual interests that have now been brought to our attention, and municipalities would be one of them.

Mr Rach: From the municipality perspective, we would welcome the opportunity to voice our opinions related to the legislation and we would hope that all the opinions of all the groups in Ontario are heard before the committee prior to introducing Bill 40 back into the House.

The Vice-Chair: Further questions? Thank you very much for taking the time to present here today. The views you've presented here are important not only to yourselves but to the people of Ontario and I thank you very much for participating in the process.

The next group is the Welland Chamber of Commerce. Are they present?

Mr Jackson: Mr Chair, I would move that we go to the next deputant and we can make up the time. They're here and they're ready and there's no sense holding them up.

The Vice-Chair: They may show up in five minutes.

Mr Jackson: They're here; good.

1550

WELLAND CHAMBER OF COMMERCE

The Vice-Chair: I assume this is the Welland Chamber of Commerce delegation. Please introduce yourselves for the purposes of Hansard. You have half an hour and I think the committee would appreciate it if you would save about 15 minutes of that for questions. Proceed at your leisure.

Mr Mike Allen: Okay, we'll do our best. We have Dolores Fabiano with the chamber. We have Gerry Berkhout and myself, Mike Allen.

My name is, as I just said, Mike Allen. I'm a local real estate developer from Welland and I'll be talking to you a little bit this afternoon. When they first asked me to come in and do this, first of all, I thought the government doesn't really listen to anybody, does it? It just doesn't happen. Why do we go through these charades? Why do we bother showing up for these things? But I'd like to think it could have some effect.

The present government has surprised us before. I'm in the real estate development business and own shopping centres. Imagine how surprised I was when it was the NDP government that brought Sunday shopping in after all the years we've been talking about it.

Ms Murdock: Not as surprised as some of the members.

Mr Allen: We tried to get that through Welland council some years ago when Peter Kormos was on council, so he'll remember that fairly well. But it seems that either the government actually does listen or at least it has a really good sense of humour.

I've taken an increased interest in reading about this stuff since I agreed to come here and talk. I've noticed that this proposed legislation is driving a really bad wedge between business and labour. I know this comes to a bargaining part where when one side wins, the other side loses, but to a large extent we should be on the same team. In other words, if business does well, business has to employ people to do more things, and I'm sure I'm not the first guy to sit here and tell you that.

From what I've seen in the papers, there are a lot of people who are terrified. There are a lot of newspapers. The newspapers are exercising themselves every day, putting new stuff in the papers, and as Don Eastman of the Ontario Chamber of Commerce pointed out, a large part of this is fear of the unknown.

When I was a kid in high school, I didn't listen to the morning news every morning and wake up and hear that the London market had opened this way or I didn't watch the evening news and see that the Tokyo market just closed tomorrow, today, that way. We've noticed that with modern communications it's more and more of an international

market and people can make decisions based on what's going on a lot more. If the international community sees us as trying to make some sort of socialist utopia in Ontario for we Ontarians, that might be good for the economy of British Columbia or New York or the Ruhr Valley or some other place, but it's not going to be good for our economy. Perceptions are really important.

We all keep watching and they're starting to use words like "triple dip" right now. I used to think that was something to do with ice cream until this current recession. But I don't think it's a good time to shake up the business community and I don't think it's a time to make us look worse in the eyes of the international guys who do money, or the flows are going to stop or they're sure going to slow down from where we are.

This isn't idle speculation. Some of the stuff I read when I was trying to do my homework for this thing was that Hayes-Dana has cancelled an \$8-million plant expansion because of these proposed legislative changes and Ford is looking at \$2 billion worth of expansions, and the kind of strange quote I read from one of the vice-presidents was, "We're reserving judgement till we see the final legislation."

People are noticing and people are getting scared. Those two examples were people inside. The people outside would just look at the brouhaha in Ontario and they'll go talk to Governor Cuomo and see what kind of a deal they can get there. The stuff that's happening is scaring those international people and I think we're hearing it.

I'm a poor real estate developer, not a lawyer in this area, but the changes to the Labour Relations Act seem to be affecting almost all areas of labour relations. From everything I read, whether it's reading bits and pieces of legislation or reading what I see in the papers, it's going to make us the most pro-union jurisdiction in North America.

Again, I'm sure I'm probably not the first person to quote this study to you, but Ernst and Young did a study and 85% of the companies surveyed expect the changes to weaken their ability to compete and 73% are predicting job losses. That same study predicted that 295,000 jobs would be lost in Ontario and I understand one of the leaders of the opposition parties had that at 588,000 jobs, but even if it's only 200,000 jobs, it's something we ought to be taking a really hard look at before we implement it. I hope—all these people are coming in—that you will take time to listen to it.

One of the greatest concerns we've discussed with the changes to the act is a proposal that would make it illegal, in most circumstances, to replace workers who have gone on strike, the rationale being that it will reduce picket line violence. The government has said that changes in the shift of power would be minuscule.

I'm sure you've read the article that was in the Globe and Mail on June 20, where they got an employer guy, a union guy and an objective guy—I don't where they could find an objective guy but they claimed they had one—and they looked at those labour disputes that had been around for a few years or been in the news in the last few years: the Toronto Star, Radio Shack and Eaton's. Those three people sort of agreed that there would be a massive shift in

power to the unions and in each case the company would have to capitulate to demands.

There have been people in here who have said, yes, they probably should have capitulated and that would have been a good thing, but it does show that there are far-reaching implications in the legislation you are looking at, like driving out business and driving out jobs or making it more difficult for them to come here.

More simply put, if you make these changes as they are in draft form, the employer can either concede to demands or he can face the fact that his business will be shut down by strike action. I can't move. I'm in the real estate business and I can't take my buildings with me, but if somebody is thinking about setting up a plant or thinking about expanding, he can sure change his mind.

While businesses are being forced to shut down, employees on strike can receive tax deductible strike pay from the union and can go out and get other jobs. The proposed legislation restricts employees' rights as much as it does the rights of business. No longer will a union require support to go out on strike or to continue a strike. Under the new legislation there is no obligation on the union to go back to the employees to ask if they wish to accept the employer's final demand.

Currently, as I understand it, if a union strikes the employees can continue to work if they believe the final offer of the employer is better than striking. This freedom encourages the union to be reasonable. Finally, after a six-month strike, and I did not know this until I got into it, employees lose the right to claim their jobs back.

According to the new changes, it will be against the law for employees to go back to their jobs until the union says the strike is over. The union has no obligation to seek a strike vote on the employer's final offer and the six-month job guarantee is extended indefinitely. This kind of thing is going to scare away investment. Decisions are made in London and on Wall Street that affect us.

Good afternoon.

The Chair: Howdy.

Mr Allen: This sort of thing is going to scare away investment. For 10 years Quebec has had legislation that bans replacement workers and there are figures in our brief on what that has done. That has made unemployment in Ontario rise a little slower than in Quebec, but you cannot put it all on the legislation, but certainly there is a correlation here that you cannot miss.

The crucial thing is that strikes will increase since unions can effectively shut down an employer's operations. Nobody likes a strike. A strike means that everybody is screwed up. A strike means that management could not figure out what the unions were doing and the unions could not figure out what management was doing. We sure as heck all lose when that happens.

Quebec has the luxury of a resource-based economy. They can't take their hydro stations away, they can't take their trees away, they can't take their mines away and us guys in the real estate business can't take our buildings away, but anybody who is thinking about setting up a manufacturing operation, and that is where the action is, is

going to have some options opened up to him. If we're the toughest place to do business in, we are going to have less and less of those guys around.

We're not demanding nor do we expect you to have a business agenda. You're a socialist government and you were elected to do some things and I guess you're going to try and do some of them. But right now, the best thing for you to do is to reassure business, reassure investment and reassure those foreign people who are thinking about parking their money someplace to make their widgets and convince them that Ontario is a place they can do business in.

The best way to convince them of that is to prove that you can listen to all these people who have been in, and I am sure there were people from the labour side who came in and talked a pretty different tale than what I am talking, but the best thing to do is to dump this bill or to alter it and change it a lot. But the best thing to do is dump it because sometimes with new information you have to change your minds and I hope you will think about that, and that is all I have to say. You told me to cut it down to 15 minutes and I did.

The Chair: Thank you kindly.

Mr Offer: Thank you very much. You spoke about relooking at this bill. Have you got any suggestions or proposals from your perspective as to how that can or should be accomplished?

Mr Allen: I have this written brief and then I have the real thrust of the way I feel about it, which is that we can't afford to scare people away from doing business here. The whole thrust of the thing is going to make this a difficult place to do business. Some guy with ice water in his veins who is sitting up on the 57th floor of the Trump Tower wondering where he is going to build his new widget plant can just as easily build it in Formosa as here.

We have some skills they do not have. We have one of the best skilled labour forces in the world in Ontario, but we have to encourage these people to do business here, and that means, don't give all the power to the other guys.

1600

Mrs Joan M. Fawcett (Northumberland): Karen Chalovich is the chairperson of the Cobourg-Port Hope government relations committee in the chamber of commerce in the Cobourg area. Apparently Gord Wilson, president of the Ontario Federation of Labour, spoke to the local chambers and actually promised that the legislation would not really go in and unionize in the small and medium-sized businesses in the retail service sector. I'm wondering, have you had any inkling of that kind of promise and, really, do you think that if there isn't a promise there, the legislation should specifically exclude these small businesses?

Mr Allen: It's not a promise; it's what the legislation says. If somebody is promising that he is going to do that, he should put his money where his mouth is, or his legislation where his promises are.

Mrs Fawcett: And make sure it is in the legislation.

Mr Allen: Right.

Mr Offer: I have a further question. One of the areas where there has been some issue of concern outside the legislation is the fact that there has apparently not been any impact study by the government dealing with how this bill may affect different sectors in the economy—the retail, the manufacturing and the service sectors. I am wondering if you can share with us your thoughts as to the need and necessity for an economic analysis of—

Mr Allen: I guess this is your impact study that we're having here, isn't it? That is what we read in the newspapers every morning. As I say, my interest in this whole thing was piqued a little bit more when you asked me to come here and talk to you. There are lot of people who are scared.

There are other parts of what's going on. The increases in the minimum wage aren't the topic for today, but I was into my friendly, locally owned grocery store the other day and I mentioned to the guy who runs the place: "Gee, you know, the reason I keep coming back here is you can get me the heck out of this store quicker than any of the chains. Just in case you wonder why I come back here and drive all the way across Welland to do it, that's why I come here." He said, "I don't know how long that is going to take, because the minimum wage is about to go up and I don't know how much longer I can have these kids working on the takeout." How did I get on to that?

Mrs Cunningham: I enjoyed your opening comments with regard to whether you would be listened to when you came there. I can assure you you're not alone. People are walking through that door wondering if there is any use to it at all. The good news is that they are coming.

Mr Allen: Pardon me?

Mrs Cunningham: The good news is that in spite of their concerns about whether they are being listened to or not, it appears that they're coming before the committee.

Mr Allen: They're still coming anyway.

Mrs Cunningham: In fact we've got about 1,200 individual requests that at this point in time are not scheduled, and from what I've been able to learn in just the couple of days I've been here, we have a lot of work to do. I'm not sure that just four weeks of listening is going to be very helpful.

I'd be interested in your point of view with regard to how we could solve these problems. Obviously in this committee, after we finish our deliberations, there will be some recommendations hopefully for change, but we're not convinced that they will be inclusive with regard to the tremendous concerns—from not only the business community, by the way. Today we heard from the education community that if the bus drivers go on strike with this law, the schools shut down because you can't have any replacement workers. If the itinerant teachers, the occasional teachers who belong to a CUPE union, go on strike, we can't get anybody to replace them in the classroom. The regular teachers can't replace them. So the schools shut down. With this law, that is what we were told. I'm wondering if you think—

Mr Allen: The government has shown that it can listen in the Sunday shopping issue, so maybe it can here.

Mrs Cunningham: That's my hope too. What about a tripartite committee looking at all the input—business, labour, certainly government—and maybe expanding it to other interest sectors like municipalities and education? Do you think that would be a useful way of coming to some conclusions?

Mr Allen: Isn't that what this committee does?

Mrs Cunningham: No, this is a government committee. Interjection.

Mrs Cunningham: We'll see. There seems to be so much happening here. I'm not sure that we can in fact accomplish that.

Mr Allen: The business community is scared right now. I hope something happens to make this government listen.

Mrs Cunningham: The importance of business, of course, in the whole factoring of providing jobs in Ontario, is that government does provide a positive workplace and a positive, encouraging atmosphere. You're quite right. On a list of 17 concerns of the business community—this book is about to be published by the University of Western Ontario—this labour law is at the top of the list.

Mr Allen: With respect, the government doesn't provide the jobs; the private sector, in most cases, does.

Mrs Cunningham: That's right.

Mr Allen: It's mostly in small business where the growth in jobs has been. If you scare away small businesses—it's real easy for a guy with a small manufacturing plant to pull up and move to New York. It does happen.

Mr Jackson: I have a quick question. I think, Mr Berkhout, we've met before. You're also in the real estate business; that's correct. I'm familiar with several companies that have moved from the Toronto area, Mississauga area to Welland to strategically position themselves. They've moved their plant operations there and they've said to me: "Cam, I'm moving there. I'm one step away from the US. I'm giving this province one last chance. I'm moving my plant there, starting fresh."

There are other reasons for it but they're able to do it. They're positioning themselves on the US border. I think what I get from your presentation, and what I hope we're all getting, is that we can break this bill down and simply look at it in terms of labour and management. But we have to pay attention to the fact that it is one more thing added to the concerns of business which is stifling this province. Welland was benefiting, in the last five or six years, from some pretty good industrial expansion and some opportunities.

Can you confirm to this committee that this is virtually dried up in terms of expansion? I know of the Hayes-Dana, because they have a plant in my riding as well. But there are a lot of other parties interested in plants and expansion—not existing plants to expand, but to locate in Welland—that have all been put on hold, and in the St Catharines area generally.

Mr Allen: I don't think there's been much new expansion lately. We can't blame everything on the poor government. There is a recession on that's largely outside of the decision-making side of the Ontario government.

Mr Jackson: But this legislation, in and of itself—you've referenced the cause for concern that you're hearing from existing plants expanding. What I'm suggesting to you is that there is no new growth, that there are no companies wishing to locate. You also have the added problem of the GM plant looking at massive layoffs in your area.

Again, when you look at the existing short supply of jobs, to the extent that you can identify businesses or sectors within your region which might be adversely affected by this legislation, it doesn't make much sense that we're going in that direction when you already have an uphill battle fighting the fact that the auto sector's been badly harmed, and so on and so forth, in your region. Regionally you're going to be hurt by this kind of legislation.

Mr Allen: That's right.

Mr Fletcher: Thank you for your presentation. The Welland and District Labour Council is here. They represent a large number of workers in the Welland area and they're indicating strong support for this piece of legislation. Is the labour council wrong and the chamber right?

Mr Allen: That's right.

Mr Fletcher: Is that the way you feel? How come the Welland city council declined to even consider your resolution to oppose this legislation? Are they wrong and you're right?

Mr Allen: I think they could have and should have done that.

Mr Fletcher: But they didn't. They're a publicly elected body and they didn't do that.

Interjection.

Mr Fletcher: We looked at a lot of the rhetoric that goes on. If I can quote something from the Welland Tribune from Tuesday, August 4, this is really an out-and-out lie that was printed. It's from the chamber: "Unions will not have to go back to their members with the employers' final offer. They (unions) can say no. The members will be at the mercy of their union leaders."

It's simply not true that the employer or the employee can call for a government vote. When we talk about the rhetoric that's going on—

Mr Allen: Did you actually research that? You're saying that's a lie. What does your research say?

Ms Dolores Fabiano: The way we understand it, it is true. There are other organizations out there that are saying it is true.

1610

Mr Fletcher: You do have the right for a government vote no matter what, no matter who you are. The employees can call for a government vote; the employers can call for a government vote during a strike. That's the law. That's not a law we put in; it was put in before we came to power. That's the way it's been.

Mr Allen: The point is, this legislation is scaring the heck out of the business community. If you want people to stop locating in Ontario, passing this law in its present form would be a jolly way to do it.

Mr Fletcher: Were you misquoted as far as that was concerned, or is that the way you stand?

Ms Fabiano: That's the way we stand.

Mr Fletcher: Do you honestly believe that's the truth?

Ms Fabiano: Yes.

Mr Fletcher: You're putting that out into newspapers, telling people that's the way unions operate. You're scaring people.

Ms Fabiano: That's the way we understand—

Mr Allen: That's the way the legislation says; we're not saying that's the—

Mr Fletcher: That's the way your whole organization is. Obviously you haven't done your homework and you don't know what you're talking about.

The Chair: Thank you to the Welland Chamber of Commerce for coming to Toronto and participating in this process. You've made your views known. The committee appreciates your attending here, trusting that you will, of course, be monitoring the progress of Bill 40 as it goes through the committee process and keeping in touch with committee members.

A transcript of this attendance or of any other participation, of course, is available to people by writing to the clerk of the standing committee on resources development.

Mrs Cunningham: Mr Chair, if I could ask a question for research again, add it to the list. There was a difference of opinion here on this right to vote. I'm certain Mr Fletcher will make certain that we get the response, at least with regard to how he would ask the question. He may want to ask it, but I certainly would appreciate a clarification.

The Chair: You want research to determine the validity of the claim of the Welland Chamber of Commerce.

Mrs Cunningham: That's right. This quote is in the Hansard. I would like to know the status of that quote.

The Chair: The next participant is the International Beverage Dispensers' and Bartenders' Union. Come forward, please.

Mr Ferguson: Mr Chair, I have a question for the research people as well. I understand that Gunderson, Melino and Reid published an article, "The Effects of Canadian Labour Relations Legislation on Strike Incidence and Duration," in the Labor Law Journal of August 1990. They did a comparison of Quebec before and after.

I would like to know whether their comparison, which they suggest indicates that Quebec has more strikes and more strike dates after the legislation was passed in that province, included empirical data around the public sector as well as the private sector, or was it exclusively aimed at the private sector employers who have 500 or more employees?

The Chair: Research has noted your question. Research is working hard investigating all of the questions put to it by all of the members and is working especially hard at collecting as much data as possible in a comparison of Ontario and Quebec on the anti-replacement-worker legislation before and after.

INTERNATIONAL BEVERAGE DISPENSERS' AND
BARTENDERS' UNION, LOCAL 280

The Chair: People, tell us your names, what your status is, if any, with the International Beverage Dispensers' and Bartenders' Union, Local 280. Tell us what you will and please leave some time for questions and exchange.

Mr James Jackson: James Jackson, secretary-treasurer, bartenders' union.

Ms Marlene Irwin: Marlene Irwin, recording secretary.

The Chair: Go ahead, please.

Ms Irwin: I just wanted to address one issue. While not referred to in the present form of Bill 40, I'd like to resubmit an issue directly linked to the administration of a trade union: union dues.

The amendment I am requesting you to consider is that employers who are not deducting and remitting union dues forthwith be in violation of subsection 44(1) and section 65 of the Labour Relations Act.

Union dues are the lifeline of local unions. The prompt deduction and remittance of union dues by the employer is essential to any local if they are to operate efficiently and give the representation and service to their members the members expect and deserve. This especially holds true for smaller locals and all locals representing employees in smaller workplaces, as companies downsize and new companies are mostly small workplaces. The number of small workplaces is increasing, as reported in the discussion paper from the Ministry of Labour, November 1991.

For example, in 1990-91 more than half of the bargaining units certified at the labour board had 20 or fewer employees. The workforce is changing. Workers in small workplaces, often women and minorities, are especially vulnerable. If these employees wish to be represented by a union, the deduction and remittance of union dues on a monthly basis is necessary. Subsection 44(1) of the Labour Relations Act provides that where a trade union requests, there shall be included in the collective agreement a provision requiring the employer to deduct and remit union dues to the trade union forthwith. According to the Gage Canadian Dictionary, the definition of the word "forthwith" means at once and immediately.

It is the board's ruling, however, that failure of the employer to deduct and remit union dues forthwith does not contravene the act and that such failure on the part of the employer must be dealt with through the grievance procedure of the respective collective agreements. In handing down their awards, arbitrators have stated that no union should have to proceed to arbitration to recover union dues owing. At the moment, it's the only option available.

It has been the experience over the last few years that locals of the Hotel Employees and Restaurant Employees International Union in Ontario who represent employees in smaller establishments have been plagued by employers who consistently do not remit union dues on a regular basis as required in their collective agreements. Grievances are filed and in some cases arbitration hearings are necessary to force employers to remit union dues owing.

Invariably, the grievances filed are for the remittance of the dues deducted from the employees' wages.

The employer seems to have few problems with the deduction, only with the remittance. In one instance, we have a local with a membership of approximately 500 members employed in 52 establishments, 10 or even fewer employees per establishment. When an employer is delinquent in his remittance of dues for a period of three or four months, it becomes a losing cause to proceed to arbitration for recovery of moneys owing. But it is an action which must be taken, as the present act fails to recognize and protect the union and its members from the serious ramifications that can be caused by this blatant act of unfair labour practice.

In many, many instances, the cost of the arbitration far exceeds the recovery of dues owing. As stated previously, arbitrators have stated in their awards that no union should have to resort to the arbitration procedure to recover union dues owing. Although they are sympathetic to our problem, we still have to pay our share of the arbitrators' fees, which in many cases is more than the dues recovered.

There have been occasions, in attempts to circumvent the arbitration procedure to recover dues owed, when locals have preferred charges at the labour board under section 65—unfair labour practice—the union's argument being that the employer, by not remitting union dues, was exercising undue influence by participating in the interference of the administration of the local union, causing financial hardship. The reply from the board was that the board is not a collection agency and that the arbitration procedure contained in the respective collective agreements was the proper course of action to be taken in these cases.

Of primary concern is that it would be feasible for a trade union to represent workers in a small workplace if they wished to be represented, so that workers who do wish to be represented by a trade union are not turned away because the workplace is too small. We therefore appeal once again to this government, and now to the standing committee on resources development, to reconsider and rethink the importance of this amendment to the Labour Relations Act.

Again, it is our submission that failure of the employer to comply, to deduct and remit union dues under the terms of the respective agreement, shall constitute an unfair labour practice and be in contravention of subsection 44(1) and section 65 of the Labour Relations Act.

In conclusion, I would like to take this opportunity to thank the committee for the time granted and trust that our concerns in regard to this matter be given consideration.

1620

Mrs Cunningham: Thank you. I wasn't aware of this. From what you've presented with regard to subsection 44(1), it appears to be quite clear to me. If you're getting an opposite point of view from arbitrators, I think it's worthy of some research on behalf of the committee. I don't think it relates to any new amendments to the act that we're studying right now. Am I correct on that?

Ms Irwin: It was submitted but it's not in Bill 40 in its present form.

Mrs Cunningham: Mr Chairman, I think what they're asking for—perhaps I could be corrected—is the implementation as the bill reads now, fairly, by arbitrators of the collection of union dues. If they're complaining about that, perhaps that's something you could forward on behalf of the committee to the Minister of Labour as a concern.

The Chair: I know Ministry of Labour staff are here paying close attention and will take heed of that. As well, this group is, I'm sure, prepared to welcome that type of amendment from any member of the committee.

Mrs Cunningham: I'm not sure it requires amendment; that's my problem. Could we hear from somebody? We've got a little time.

The Chair: Research will inquire into that. Do you have anything further of these people, Mrs Cunningham?

Mrs Cunningham: No.

Mr Klopp: Am I interpreting this right? If I, as a bartender, an employee, belong to a collective group, a union, the employer takes off my cheque money that is supposedly to go to my organization, and it's not going there?

Ms Irwin: That's right. This happens on a regular basis. In the last two weeks, we have what? Six grievances?

Mr Klopp: What are they doing with it? Are they giving it back to me, as the worker?

Ms Irwin: No. We can't say what they're doing with it.

Mr Klopp: So I'm working long hours and I'm taking whatever it is, \$5 or \$2—it doesn't matter—and the employer is taking the money and not passing it on through? That's bizarre.

You've had unions organized for a while. Have there been any strikes, or how has it been working? Since we've had organized labour in the workforce in bars, how's it been working?

Ms Irwin: You're asking us about strikes from our local?

Mr Klopp: Yes. I haven't heard of any but, if there have been, how have things worked out?

Mr James Jackson: We haven't had a strike since 1981. That time it involved approximately 25 establishments. There have been very few labour problems regarding collective agreements being ratified or negotiated in the hotel business. Things are so bad in the hotel business, it's getting to a point that we have to sign anything.

Mr Klopp: So labour and management have worked together fairly well. Collectively, they've recognized each other's plights as workers and as owners.

Mr James Jackson: Yes.

Ms Irwin: In larger hotels, you don't have this problem with their not remitting the union dues as much; it's more the taverns, the smaller hotels and the restaurants. In the larger hotels, you don't have this problem of their not remitting the dues for three or four months.

Mr Klopp: That's back to that other issue. What has made them start doing that?

Mr James Jackson: This isn't something new. This has been going on for some time, even during the good times; they hold it three or four months. In the smaller establishments, they probably owe you maybe \$800, which doesn't seem like much. But our concern is that say a hotel association of some kind gets together and says: "Let's all withhold our dues for three or four months. Let this union chase us for its dues through arbitration. We can bring them to their knees." In the brief, it talks about the ramifications, and this is part of the ramifications that can happen.

Ms Murdock: Just for my clarification, there already exists under the present Labour Relations Act the section for deduction and remittance?

Ms Irwin: No, all it says is if the union so requests.

Mr James Jackson: It should be part of the collective agreement. That's all it says.

Ms Irwin: And you're supposed to use the grievance procedure and the arbitration.

Ms Murdock: Right, the arbitration process in order to get whatever has been deducted remitted to the union. What I'm hearing you ask for—correct me if I'm wrong—is that you want the jurisdiction of the board to be expanded to force them to do that without going through arbitration? Exactly how would you see that working?

Mr James Jackson: In one respect, yes. What we're saying is that withholding of the dues is an unfair labour practice, contrary to the act. So then we can file our charges at the board.

Ms Murdock: I discussed this with the policy people because I wasn't sure of the process, as I've never actually gone before the labour relations board for anything. You go through arbitration to the labour board on the grounds that it's an unfair labour practice. You end up going through that whole process, but at the end of the day, when all is said and done, you have an arbitrator's award or a board award stating that certainly the money has been deducted and is owed. If it still isn't paid, the process still means that you have to go through the court system to get it.

Mr James Jackson: Yes.

Ms Murdock: I'm wondering what difference it would make if you did put an amendment in to make it an unfair labour practice, as compared to having to go through a collective agreement grievance procedure.

Mr James Jackson: Approximately a \$1,200 arbitration bill.

Ms Murdock: But you'd still have to go through both, would you not? You'd still have to put out costs to go before the labour board on an unfair labour practice.

Mr James Jackson: There's no cost for me to go to the board.

Ms Murdock: And appear on your own behalf.

Mr James Jackson: I don't have to pay an arbitrator, I don't have to pay the board to hear my case at the labour

board, so I'm avoiding arbitration costs. This is the killer: the arbitration costs. Can you imagine paying arbitration costs of \$1,000 to recover \$500 worth of union dues?

Ms Murdock: I understand. Your argument was very forcefully made in terms of the costs, to get back costs that are owed to you.

Mr James Jackson: Exactly. It seems that when an employer gets a notice from a union, if it's arbitration or a grievance it's pooh-poohed, pushed aside, but when he gets a notice from the labour board, he thinks twice and usually does what he has to do to remedy the situation.

Mr Offer: Thank you for your presentation. You've spoken about a very specific issue. It just seems to me—correct me if I'm wrong—the point you're making with respect to union dues is that if the deduction and non-remittance of dues is an unfair labour practice, and by amendment deemed to be, then you would be able to go directly to the board if those dues are not remitted. If it is not, you still have the right to be heard but it would be through arbitration, for which you encounter an arbitration fee. So the question is, do we put the obligation of withholding and non-remission of dues as an unfair labour practice? Is that your position?

Mr James Jackson: Yes. What other reason would an employer have for withholding dues, knowing that if he's going to arbitration he has to pay an extra \$800 or \$900, whatever his share of the arbitration bill would be, over and above the union dues, unless it were to cause hardship to the local and interfere with the administration of that local? It's not that he forgot to remit. There has to be a reason behind it. To me, the whole thing smacks of unfair labour practice.

1630

Mr Offer: To carry on with your point, it would seem to me that in the practical sense it clearly doesn't happen only once; there's probably some history of this.

Mr James Jackson: Oh, definitely, yes.

Mr Offer: Which again not only makes your point but underlines the point you make. I just asked the question to make certain that I had it clear in my mind as to what it was you were requesting and why you were making that request. I thank you very much.

Mr James Jackson: Like we say, there's no problem in the deduction: The employer deducts. It's the remission. All we're asking is that failure to do so, under the terms of the collective agreement, is an unfair labour practice.

The Chair: You wanted to raise one more issue?

Ms Irwin: Yes, I just wanted to point out that when we go to the board through the grievance and the arbitration process, the board also has some costs. It's not just the union and the employer that share the bill. They pay for the grievance officer and they also do the setting up of the meetings between the two parties, so it's not that there will be costs for the board now that there weren't before. I don't think there's going to be much difference in costs to the board.

The Chair: I want to thank you for raising a very unique issue, one which had not been raised before this

committee until your attendance here. You've obviously provoked a lot of thought and interest on the part of committee members. I'm sure you would be most pleased to see, as well as interest, some action. I trust you'll be monitoring the committee in that regard and keeping in touch. Thank you, International Beverage Dispensers' and Bartenders' Union, Local 280, thank you kindly.

In the evening sitting of Wednesday, August 5, 1992, Mr Turnbull moved the following motion:

"That the Minister of Labour table all documents, briefing notes, correspondence and memoranda in his possession or the Deputy Minister of Labour's possession from a meeting between the Deputy Minister of Labour and American business representatives that took place in Detroit, Michigan, on or about June 8, 1992. The material should include any briefing material prepared in advance of the meeting, including the list of participating American companies, and any summaries, comments or correspondence that were generated after the meeting took place."

That motion remains outstanding as currently on the floor, not having been voted upon. I understand, Mr Jackson, that you have authority to deal with that motion.

Mr Cameron Jackson (Burlington South): Yes. Mr Chairman, in order not to challenge your previous ruling and to be helpful to the ongoing activities of this committee, I am prepared on behalf of my colleague to withdraw the motion at this time, although it still stands as a request for information; it's just not put in a formal motion.

The Chair: Can you do that on behalf of Mr Turnbull, who moved the motion?

Mr Jackson: Oh, yes. I move to withdraw the motion at this time.

The Chair: That is your right on behalf of Mr Turnbull. There is now no motion on the floor.

Mr Jackson: Mr Chairman, I'd like to resubmit the motion I raised earlier.

The Chair: You've prepared copies and they're being distributed to the members of the committee.

Mr Jackson moves that the committee request that legal staff of the Ministry of Labour attend public hearings of the committee on Bill 40 and be available to members of the committee to answer and clarify questions from members about the bill that may arise during the course of the committee's hearings on Bill 40.

Mr Jackson: As I indicated earlier, the task before this committee is to conduct public hearings which lead to at least, I understand, two weeks of clause-by-clause discussion, debate and voting by members of this committee. What appears to have emerged is a sort of ad hoc approach to getting information from the ministry regarding the specifics of the legislation. I respect that the parliamentary assistant is here and can deal with matters of a narrative nature, matters that deal with the politics of the issue, but frankly there have been some very specific points raised about legal clarification. It has been my experience in my almost eight years as a legislator that when before committees dealing with specific legislation—not a committee doing an inquiry on a general subject area, but when we're dealing with specific legislation—it is the government's

wish at all times to ensure that all members are aware of the legal implications and the clarifications that are prevalent with one of its bills.

This is very technical information and it helps to elevate the debate from that of the theories and the fears being banded from both sides to a level where, as is the case of Mr Bruce Stewart, legal counsel for the trustee associations in Ontario, it allows us to raise substantive questions about interpretation of specific clauses.

I hope that this custom and necessary courtesy would be extended to this committee, and therefore I put it in the form of a motion to formally request. I do not in any way, shape or form denigrate the presence of ministry personnel who monitor these hearings from time to time. I respect the minister's right to monitor hearings and to report back to the ministry.

What I'm asking for is that level of resource which allows the committee to complete its task, and that is not for someone from the political staff of the Ministry of Labour or someone who may be in an unrelated field but for someone who has specific working knowledge and has been working with the government in the legal department on this bill. That has been extended as a courtesy to committees and a custom around Queen's Park for many years.

I'm asking that it help the activities of this committee and move us away from some of the vitriolic approaches and move us more to some of the legal, clearly defined explanations of how specific sections of acts will work and affect workers and employers in this province.

The Chair: Ms Murdock, did you want to say, as parliamentary assistant to the Minister of Labour, that bureaucratic staff from the Ministry of Labour familiar with this legislation, including Jerry Kovacs, who is one of the counsel, are present in the committee chambers to be available to any member of this committee, regardless of caucus, for advice as to the impact of certain pieces or all of the pieces of the legislation and that those staff are here throughout the process to make their time available to any member of the committee? Did you want to say that on behalf of the Ministry of Labour?

Ms Murdock: Yes.

The Chair: Thank you. Is there anything else you wanted to say?

Ms Murdock: There is another concern, Mr Chair, and that is the fact that ministry staff, as we all know, are not usually involved in any partisan way. Albeit I understand what Mr Jackson has stated, they are nevertheless here for the information that we are asking of them on occasion, but they become at this process involved in the debate, which I don't think is part of their function at all. In fact, if anything, keep them out of it.

Mr Eddy: It's not the purpose or intent to be part of the debate; it's merely a point of information. I demand to be treated equally with other members of the committee who have information. I don't even know the questions, let alone the answers.

The Chair: If I've ever treated you any less than equally, Mr Eddy, I'm sure you'll let me know.

Ms Murdock: They're here for you the same as they're here for me.

Mr Eddy: But that is not proper.

Mr Ferguson: If anybody had a question of the legal staff, he could get out of his seat and go ask it of the legal staff, who have been here since day one. You're moving a motion requesting that legal staff be present. They've been here since the hearings started.

Mrs Cunningham: I appreciate what Mr Ferguson's saying, and I also appreciate that a lot of people have sat on this kind of a committee before. But normally the legal staff would sit at the front, and if I wanted to know if section 40 of the bill said that you have to have in your contract the responsibility for management to collect the dues—this is the last issue here—and I didn't know this and I didn't have the act in front of me, it would be a simple response from the legal staff. They, on the spot, right in front of these people, would have said. Mr Ferguson's going like this; Mr Fletcher's going, "There they are." But, Mr Chairman, with due respect, you haven't asked them to come to the front and answer the question.

I would like from now on to have them sit at the front and you, as you did in the committee hearings on the helmet and everything else, refer to the legal staff, in some cases the legislative research, and have the question answered. I think they deserve to have the status, if they have the information, of sitting there and advising all of us so that it's on the record.

1640

The Chair: Are you moving an amendment to the motion?

Mrs Cunningham: Is that the intent of the motion?

Mr Jackson: Mr Chairman, if I may, implicit in the motion is the procedure which was followed most recently in Bill 121 when Dana Richardson from the Ministry of Housing was present for the hearings. Without in any way detracting from the time allocated to deputants, occasionally questions were directed to the ministry which then formed the basis for Hansard.

The importance of informing the basis of Hansard is that the government can put to rest any of the concerns that may arise from a given clause. Then you, as Chair, can rule that, as of three weeks ago or three days ago, learned counsel adjacent informed us on that matter. That becomes an assist to these hearings.

But in recognizing that in the government members we have all new members, I want to reaffirm that I am asking no more or no less than is the custom of the procedures for committees. As a committee Chair myself, I can assure you that this request is wholly in order.

The Chair: You've heard especially the government members' contribution to the debate on your motion, which indicates clearly what their interpretation of this motion is. Do you want to amend this motion to be more particular and more specific?

Mr Jackson: Well, if the Chair is helpful to me, and I know he will be, I understand that this motion will call upon the legal counsel of the Ministry of Labour to position

themselves at the front, and they will be called upon, through the Chair, to offer clarification from time to time. It therefore becomes Hansard.

I do not wish in any way to suggest that when we have four deputants in front of the four microphones in front of us, they somehow have to muscle their way in in order to get on Hansard. That is why it's done that way, and there's no problem with them sitting there. If a member from the government wishes to walk up to the member and ask him a question, fine.

Mrs Cunningham: You want it on the record.

The Chair: Do you want to amend the motion to read "That the committee requests that legal staff of the Ministry of Labour attend public hearings and be seated at the table of the committee on Bill 40 and be available to all members of the committee"?

Mr Jackson: That is helpful, Mr Chair, and I accept that as the amendment, thank you.

The Chair: Further discussion?

Ms Murdock: I just have a point of clarification of Mr Jackson. One of the concerns that the ministry staff have is that, for example, if one of the presenters was making a statement in error on the record, then you're not seeing part of their function as correcting that? Only upon request of the Chair?

Mrs Cunningham: Only if they're asked.

Mr Jackson: In fairness, Ms Murdock has asked a good question, because how the process traditionally works is that the minister or the parliamentary assistant is positioned to assist at all times during the process, and the legal counsel then advises the minister or the deputy that there may be an erroneous statement. The minister then has the opportunity, through the Chair, to suggest that perhaps that information is incorrect.

That's how the tandem works, because it puts the bureaucrats in an awkward position to be interjecting with members of the public or other politicians. That's why the tandem works. I'm simply saying, at this point, that the legal counsel is there to assist the committee through the Chair, always through the Chair.

Ms Murdock: Okay, just as a point as well, I am taking some exception to the fact that it's automatically done that way. So far I've been through three bills, albeit I am a new member, Mr Jackson, and have only been around for 20-odd months, and I know that it has been done three different ways. As a consequence, there is no regular way of doing it.

The Chair: Ms Murdock, let me indicate to you that it is not unprecedented—

Ms Murdock: No, I understand that.

The Chair: —listen to me for a moment—for the parliamentary assistant or the deputy minister or the minister to be seated at the table, accompanied by either a senior policy person or by counsel, and for those persons to be seated at the table so that their comments, their responses to questions, are on the record. In previous instances it has, to the best of my knowledge, been done voluntarily by the ministry. The ministry obviously can decide to do that or

not to do that. I indicate to you that there clearly is precedent for that happening.

Ms Murdock: I'm not questioning the precedent. I understand it but, as I've said, I've sat on three different committees now, going through a bill, and all three have been done it in different ways. One of the ways was to have them up there throughout the public hearings. Another time was not to have them during the public hearings, only during the clause-by-clause. I have no difficulty with their being available. My concern, and their concern, is that they would get involved in the debate, which is not the point.

Mr Jackson: No, they're not there to debate.

Ms Murdock: That's fine.

Mrs Cunningham: To speak in favour of the motion, I find that it would be much more helpful to all of us to have the clarifications from time to time immediately, so that we don't have to keep waiting. I think it's important, and to the deputants as well. I just find this very frustrating.

By the way, Mr Chairman, I think it's not appropriate that we get up from our chairs and move over there. I think even Ms Murdock missed half the other—she would prefer to have her question answered. I know what she was asking, because I wanted to ask the same thing, and I think it would have been better if she had asked through the Chair and you could rule if it was too political or whatever.

Ms Murdock: But I don't want to use up the time of the presenters, and that's the concern.

Mrs Cunningham: We can do that at the end of the hearings.

Interjections.

The Chair: Please, are there any further persons wishing to engage in this discussion?

Mr Jackson: Finally, Mr Chair, I would only like to suggest that if the taxpayers are going to pay for the staff of the Ministry of Labour to attend these hearings, why not get value for the dollar and put them at the table so that they can assist this committee more effectively at this time? I would call the question as a recorded vote.

The Chair: The taxpayers have a number of ideas about how to get better value for their dollar. In any event, all those in favour please indicate. Keep your hand raised until your name is called.

The committee divided on Mr Jackson's motion, which was agreed to on the following vote:

Ayes—11

Cunningham, Eddy, Fawcett, Ferguson, Fletcher, Huget, Jackson, Klopp, Murdock (Sudbury), Offer, Ward (Brantford).

Nays—0

Mr Offer: Mr Chair, as that motion has now been carried, there is a further point.

The Chair: You might have made Ministry of Labour counsel's day.

Mr Offer: There is a further motion I would like this committee to consider. It is a matter which I brought

forward earlier, and prior to moving it, I would like to make this statement.

We had heard that there were a number of individuals, groups and associations that were not able to get on the list to be heard. We have now had, and every day further evidence comes forward, more and a broader form of information dealing with this bill, of individuals' concerns with the legislation, their suggestions as to how it can be improved, rectified, remedied. It would seem to me that because we have had an overwhelming response of individuals who wish to come before the committee, we should be able to afford them, as best we can, the opportunity to be heard.

At this point in time, we are going to, I understand, be able to entertain about 25% of the individuals and groups that wish to be heard. Just as late as today, we heard from the Canadian Paperworkers Union, which indicated that it would like to have the opportunity of coming back to the committee as a result of issues which may have been brought up during the committee. I believe the point they made is very important and I believe we as a committee should do everything we can to attempt to meet that particular issue they brought forward.

So, Mr Chair, I will be moving a matter which I have previously moved, that the committee formally request of the three House leaders authority to extend our hearings on Bill 40.

The Chair: You're moving that now?

Mr Offer: Yes.

Mr Ferguson: That's really open-ended. Could we have some sort of indication of time or how many months?

The Chair: One moment. Does anybody want to address the propriety of the motion?

Ms Murdock: I've already addressed this. Our position has not changed.

The Chair: The propriety of the motion.

1650

Mr Ward: That is not in writing. I don't think—

The Chair: It's not mandatory that it be in writing.

Ms Murdock: I wonder as to the propriety of the motion only in the sense that we've already discussed this. We've already voted upon it and my reasons are on the record already as to why I didn't support it the last time and why I'm not supporting it this time.

Mrs Cunningham: Mr Chairman, we were talking previously about precedent. During the deliberations of any committee, as people see a change because of requests from the public, there have been changes in sitting times, length of time for hearings. This is not new. To say now that we don't want to listen to these people given some of the good information that we've been getting, I think, is very much premature. We're into what, the second week of hearings? We'll be moving around the province soon, and if I could ask Mr Offer perhaps to wait for another week and see if these requests are still coming in, I think we owe the public an opportunity to be here.

Mr Ward: Speaking to the Chair's concern, I was wondering if he could rule on whether or not this com-

mittee has the power to overturn a decision that has already been negotiated with the three House leaders and already passed in the House.

The Chair: Are you speaking as to whether or not the motion is in order because it's identical to a motion that was defeated—

Mr Jackson: The question's already been decided.

The Chair: —but a mere few days ago? Mr Offer, do you want to respond to that?

Mr Ward: And whether or not—

Mr Jackson: Mr Chairman, he asked you if the committee can overrule a previous motion and he asked the Chair to rule and you've asked Mr Offer to—

The Chair: Yes, and I'm giving Mr Offer an opportunity to respond before I rule.

Mr Jackson: That's not procedure, but I'm fascinated.

The Chair: Yes, it is. Today it is. Watch. Mr Offer.

Mr Offer: I think that some of the government members find this type of motion funny. The problem is—

Mr Ferguson: Mr Offer, come on.

Mr Offer: No, I'm sorry. The government members now are responding, but I think that the Chair gave me the opportunity to respond to the government members' request, so I think I would take advantage of that.

Ms Murdock: Well, do so.

Mr Offer: This is not a matter which should be taken lightly. We have heard a great many presentations on the bill, both for and against. People are coming before this committee who have concerns, and what is becoming quite evident is that a great many people wish to be heard, a substantial percentage of those groups are not going to be able to be heard and, third, that this bill is not just labour on one side and management on the other.

This is a bill which has garnered a great deal of concern from children's aid societies, school boards of this province, we have concerns from independent grocers, and these are people who are taking the time to come before this committee.

The reason that I make this motion is because I believe there are a number of individuals—a substantial percentage; in the area of 75%—who want to make that presentation but won't be able to, and then we as a committee will not have the opportunity of listening to their concerns, and I speak not only of those against the bill. I speak of, for instance, the Canadian Paperworkers Union. I speak of concerns made by the Steelworkers or the Ontario Federation of Labour.

I think that we as a committee, before we go into clause-by-clause, want to be very comfortable that we have heard a broad parameter of concern about the bill and about those who are in favour of the bill. I think we want to be very secure in what our position is—

The Chair: Mr Offer, all of that having been said, Mr Ward raised a question about whether or not that motion's in order. I invited you to respond to that. I would indicate to you that on August 5 in the evening you moved that this committee formally request of the three House leaders

authority to extend its hearings on Bill 40. That motion was voted on and defeated, and I refer to standing order 49, which says that, "No motion, or amendment, the subject matter of which has been decided upon, can be proposed during the same session." That is an identical motion to the one which was moved by you and decided upon on August 5. I'm determining that the motion is not in order. We're going to come back this evening. If you want to put another motion that isn't identical or close to the one that you put on August 5, then—

Mr Offer: I'm not going to challenge your ruling, Mr Chair, at all, but I would also understand that it would not be out of order for me to ask for unanimous consent—

The Chair: Then ask for it.

Mr Offer: —of all members who feel that this motion

Mr Jackson: Point of order.

The Chair: Is there unanimous consent that Mr Offer be permitted to proceed with this motion?

Interjections: No.

The Chair: There's not unanimous consent.

Mr Jackson: On a point of order, Mr Chair: I have growing concern about the flamboyant style of the Chair at the moment. I'm not going to challenge your ruling, but I wish to draw to your attention that the rules indicate that if

a motion is deemed to be out of order, the Chair is to rule immediately on it. I'm sorry that I did interject when I asked when Mr Ward legitimately asked if it was in order. You allowed the debate to go on.

The Chair: Yes.

Mr Jackson: The time of this committee is at an absolute premium, and I frankly believe that, if you knew that was the rule, you've allowed for unnecessary debate. We're not prepared to challenge the Chair—

The Chair: That's your opinion and I appreciate you saying that. Is there any other business?

Mr Jackson: No, Mr Chairman, I'm on a point of order and—

The Chair: Another point of order?

Mr Jackson: The point of order is specifically, Mr Chair, that if you would give a higher regard for the rules to ensure that the debate is allowed to continue appropriately, I'd appreciate it.

The Chair: Your point is well made.

Mr Jackson: Thank you.

The Chair: Thank you, Mr Jackson. We're recessed until 6:30.

The committee recessed at 1657.

EVENING SITTING

The committee resumed at 1830.

MUNICIPAL ELECTRIC ASSOCIATION

The Chair: It's 6:30. We're ready to start. The first participant is the Municipal Electric Association. Would they please come forward, seat themselves at a microphone or microphones and tell us their names and their titles with their organization. Please try to leave the second half of the half-hour, at least, for questions and exchanges. Go ahead, gentlemen.

Mr Doug McCaig: Thank you very much, Mr Chairman, and good evening. My name is Doug McCaig and I'm the chair of the Municipal Electric Association. Joining me this evening are our president, Keith Matthews, our chief executive officer, Tony Jennings, and the chair of the Municipal Electric Association's labour relations program advisory committee, Jim MacKenzie. For the benefit of the committee members, Jim has assured me that he is not related to the Minister of Labour.

The Chair: Strange. He looks like him.

Mr McCaig: As a side note, I would like to point out a couple of things about myself personally. I'm a 30-year member of the Ontario Secondary School Teachers' Federation and belonged on its negotiating team for several years. I was a member of the International Brotherhood of Electrical Workers for a few years and was relatively active in the IBEW. I would also like to point out that I was asked by the IBEW to run for the commission in Fort Frances. As a young person in Fort Frances, I can recall stories from my parents when a union hall was a woodshed. So, really, I have an understanding about what direction you want to go in and what you're trying to do. I respect that.

But I would caution at this time, again on a personal basis, that the government proceed with caution. We have to be very careful with some of the things that are happening in this day and age so that you don't inhibit the utilities in the delivery of a critical service such as electricity. I would like to leave that message with you just before I go on with my dissertation.

I have tabled with the clerk of the committee the Municipal Electric Association's written response to Bill 40. It is a rather extensive document. I trust the members of the committee will be able to review it. This evening I will briefly touch on some of the major points from our written presentation and I would welcome questions from members of the committee.

The Municipal Electric Association is the responsible voice of Ontario's 312 municipal electric utilities, representing 75% of the electricity consumers in this province. The MEA welcomes the opportunity to provide information to the resources development committee and to lend our voice to this discussion on Bill 40.

As an industry, the municipal electric utilities are heavily unionized. While our industry does experience strikes and lockouts, I am proud to state that over the years there has been a reasonably harmonious relationship be-

tween unions and management. The MEA, as the representative of the municipal utilities, is uniquely qualified to speak on certain aspects of Bill 40.

Much of the discussion and concerns which have been voiced around the changes to the Ontario Labour Relations Act have been raised by the private sector business community. The perspective of the broader public sector has largely gone unnoticed. However, we at the municipal level also have concerns with the direction and the impact of the legislation. We would like to acknowledge that as a result of the discussion with the Ministry of Labour, some of the favourable adjustments were made. There is, however, need for further dialogue. There is more to be done.

Despite earlier sessions held with the ministry based on the discussion paper, the actual wording of Bill 40 has only been available since early June. This legislation is too important to rush.

Our industry's general view is that a number of the proposed reforms of the Labour Relations Act are not appropriate. The potential impact on our critical industry is disturbing. We appreciate the fact that one of the stated purposes of the reforms outlined in the discussion paper is to foster economic development. However, I should note that many of our locally elected commissioners believe that introduction of these changes under our current economic conditions will in fact have the opposite effect.

The Municipal Electric Association has identified three major concerns with Bill 40, the purpose clause, replacement workers, and finally, the definition of the "place of operation." The MEA has also identified a number of other concerns which are outlined in our written submission.

First, the purpose clause: Bill 40 would for the first time enshrine an extensive new and untested purpose clause in the legislation itself. We are advised that by including the purpose clause in the legislation, all other aspects of the legislation are affected. While the current preamble has been referred to for guidance by the Ontario Labour Relations Board for a number of years, its impact has been tempered by its position; that is, it has expressed intent but not been treated as part of the law. The MEA recommends that the purpose clause be placed in the preamble.

In our written brief we have also suggested two options for this preamble. The first option would amend the government's proposed wording. The second option provides the government with new wording.

MEA recommends the following wording: It is in the interest of the province of Ontario to further harmonious relationships and industrial peace between employers and employees by (1) ensuring that workers can freely exercise the right whether or not to organize and to be represented by a trade union of their choice and to participate in the lawful activities of the trade union; (2) encouraging the process of cooperative collective bargaining; (3) providing effective methods of joint problem-solving and dispute resolution.

Again, I stress the importance of moving the purpose clause out of the legislation and containing it in the preamble.

A second point, replacement workers: As providers of critical services, the MEA called on the government to include provisions within the legislation which would permit the use of replacement workers in order to ensure that critical services are maintained during a strike or lockout. I am certain that all members of the committee can appreciate the need to ensure that electric services are maintained for customers during a labour dispute. Members of the committee may be aware that the discussion paper was virtually silent on the issue of the use of replacement workers for critical services.

The MEA believes that earlier discussions with the Ministry of Labour contributed to subsections 73.2(2) and 73.2(3) of the legislation, which allow for the use of specified replacement workers in certain situations. The MEA understands that the government intends that municipal electric utilities will be permitted to use specified replacement workers under subsection 73.2(3). This allows for an employer to use replacement workers in order to prevent "(a) danger to life, health or safety; (b) the destruction or serious deterioration of machinery, equipment or premises; or (c) serious environmental damage."

The MEA finds that this section is still ambiguous and is an inadequate response to the situation. It is the nature of the electricity distribution business that it is virtually impossible to predict at what point these three definitions may occur. The MEA therefore recommends that electricity be included as an eighth item under subsection 72.2(2).

Members of the committee will appreciate the need to maintain electric services during a labour dispute. One has only to think about the consequences of extensive, frequent or lengthy power disruptions to a hospital, a nursing home, a sewage treatment plant, high-rise elevators or traffic light systems. Clearly, the need to maintain electric service is critical.

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Although the MEA is pleased to see a recognition of critical services, we also have concerns around the use of bargaining unit employees during labour disputes. The legislation provides that the union can give consent for bargaining unit employees to be used during labour disputes. The employer is required to use bargaining unit employees; however, the employees are allowed to decline. Nothing in the legislation precludes an employee from changing his or her mind as to whether he or she is willing to work. Similarly, even if the trade union consents to the use of bargaining unit employees, there is no obligation for the bargaining unit employees to fulfil this consent.

The MEA recommends that subsections 73.2(7), (8) and (9) be deleted.

Almost half of the MEA member utilities are public utility commissions which are responsible for the delivery of water. While some businesses and families have their own wells or other services, the supply of water, particularly in urban areas where there is a municipal service, should be considered as critical.

The provision of water should also be included under subsection 73.2(2).

Place of operation: The third concern of the MEA has been that Bill 40 has the ambiguous definition of the term "place of operation." A public utilities commission may have a number of locations or sites throughout a municipality; for example, a head office, a water plant, a works yard and an electrical substation. Many utility staff may have a base location, but their place of operation varies throughout the municipality wherever power lines run.

The MEA is seeking clarification of the term "place of operation." The MEA suggests that the government consider the definition of "establishment" as set out in the Pay Equity Act, RSO 1990. In the case of the municipal sector, the municipality was the boundary set for "establishment."

As I indicated earlier, the MEA has a number of other concerns about Bill 40. As time is limited this evening, I am not able to expand on all these concerns. I would urge all members of the committee to review our written brief.

I would like to thank the committee for the opportunity to express views which I believe are shared by the broader public sector. I believe we have brought a unique perspective to these discussions and I trust the MEA has shed further light on some aspects. Since the government seems determined to proceed with Bill 40 at this time, we would encourage further consultation and we continue to be willing to assist.

Mr Chair, as an elected representative of many people, this completes our presentation. I would now welcome any questions from members of the committee, which I will deflect to either one of the experts to my left and right.

The Chair: Thank you, Mr McCaig. Mr Huget, five minutes, please.

Mr Huget: Thank you very much, gentlemen, for a very interesting presentation. It's nice to see many of you again. I am particularly interested in the discussions you had earlier with the ministry. I wonder if it would be safe to say that many of your concerns were addressed after those discussions in terms of their reflection in the new bill. Would that be a fair statement?

Mr McCaig: I think that would be a fair statement, yes.

Mr Tony Jennings: I think, Mr Huget, the point the chairman was making was that there has been some definite progress. There are still some great concerns with the wording that is in the bill now, but given where the discussion paper was at, the bill is some progress. I don't think we could say that the MEA committees are yet satisfied, but they're quite happy to work with whoever for further progress.

Mr Huget: The contents of this brief, I must say, are very constructive. There are issues raised here that I think are very important to the general public, certainly very important to all the member utilities.

When we look at work stoppages, I guess I would like from you what your experience has been and how you've worked with your bargaining unit people in the past in terms of work stoppage situations. I understand you have a fairly good record and there aren't that many stoppages, but what happens now when there is a stoppage?

Mr McCaig: I would like to deflect that question to Mr MacKenzie at this time.

Mr Jim MacKenzie: We do have labour disputes within the electrical utility industry and I've been in the position of experiencing a couple of strikes in my own career. Generally, in the discussions we've had with the unions involved, when it comes to a labour dispute where we've talked to them about providing critical services, the unions themselves are a little bit concerned about using unionized employees to conduct some of the work. I've been in a fortunate position where we've had qualified management people who were able to attend to the work.

Another issue we have to deal with, of course, is the qualifications of the people we have on staff in the supervisory and management area. They have to be qualified to do the work because we have to address ourselves to the requirements of the Occupational Health and Safety Act. I've been fortunate in the situations I've been involved in. We've had qualified management people to do the work and we've been able to continue to provide services, through the course of any labour dispute, with management people. The union people have not expressed any interest in performing any of the work we've had to perform to maintain service.

Mr Hugot: I understand that same sort of cooperative approach would be used in Bill 40 as well, to determine what would happen during the work stoppage. Am I correct on that?

Mr MacKenzie: Under Bill 40, as I understand the legislation, we would discuss the provision of services with the union, but there does not appear within the bill to be any obligation on the part of the bargaining unit employees who are on strike to offer their services. There is provision within the bill for the trade union to suggest that, yes, they would make available or would agree to the use of bargaining unit employees, but there's no commitment within the bill for those bargaining unit employees to perform work. That's not evident to me when I read the legislation.

Mr Hugot: Just one final point: Could I have a brief explanation of the problems you see in the definition of "place of operation"? You raised the point in your brief and I'd like some sort of a hands-on explanation of how you see problems in that area.

Mr MacKenzie: When we discussed this with some of the ministry staff, concerns were expressed by ministry staff about having people who are parachuted in, I guess, to operations and with respect to issues on a picket line where you've got unfamiliar faces. The legislation seems to address that.

Of course, in a municipality you could have, say, an engineering department working out of a head office. You could have other work sites, electrical substations in the case of electrical utilities, pole locations, because we have to work on individual poles when we're doing maintenance. In terms of water, it could be an engineer working in a city hall who may have to operate a water treatment plant if the municipal waterworkers were on strike.

We felt that the location description was very specific, whereas it should be broader because we provide service to the whole community, not just to one particular part. Our operation covers the whole community and that's why we suggested you use the term "establishment," as was used under the pay equity legislation.

Mr Offer: Thank you for your presentation, certainly with respect to the areas you've addressed, and second, as to how you've addressed them by suggesting some ways the bill can be changed so as to meet, in this case, the concerns you've brought forward.

You've spoken very specifically about the legislation. I want to deal with the replacement worker issue and the issue of concern around the use of bargaining unit members and the whole process if there is a work stoppage. I think you've brought forward a new issue before the committee now.

My question is, could you please explain to the committee the dangers that you see with respect to the wording that now exists? I think we're talking about subsections 73.2(7), (8) and (9). What is it that you require where you require this change to take place, and why?

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Mr MacKenzie: We're asking that subsections 73.2(7), (8) and (9) be deleted. As we read the legislation, although the bargaining agent can agree that bargaining unit employees can provide services during the course of a labour dispute, there is nothing in there that suggests those employees are committed to providing those services. You could have, on the one hand, an agreement that employees will provide service, but when you need them to be available to provide that service—and that typically is going to be an emergency where there's a power outage or an accident and you have wires down, that sort of thing, and you want to attend to that quickly—there's no obligation on the part of the employees to attend. You could phone or get in touch with those people and all they have to do is say they're not available. There's no onus on them to be available.

Mr Offer: So now what we're talking about is that, in a work stoppage, some emergency arises: Lines are down; something of this nature which can affect a great many people. There is no security within this legislation, except, as you have indicated, the amendments that take place, which would be able to address that incident if it would occur.

Mr MacKenzie: I believe that's correct. Yes.

Mr Offer: In this whole area there's also no time frame. In other areas of the bill, we talk about a board making decisions and things like this within 15 days or 30 days. There's nothing here that talks about the days or the hours upon which a union and management have to have these decisions made. When those things are left out, it causes a further uncertainty which I think is also problematic, certainly in the area you have uncovered. Have you taken a look at the process under which this could evolve?

Mr MacKenzie: We don't see that there is a process there right now. It's very open-ended, from our point of view. I would agree with you with respect to the time.

There doesn't appear to be an onus on anybody to get back to somebody and say, "We'll reach an agreement by such and such a point in time." It's too loose for us and I don't think we could really respond to your question because it's so open. I think we'd have to look at a whole different set of circumstances.

Mr Offer: Thank you very much, once more. You spoke about, if I might just say, the provision of water should also be included. You've also alluded earlier to the fact that you've had meetings with ministry officials. Was this issue made known to them earlier on?

Mr Jennings: I think it's probably been mentioned in passing because about a third of our members are PUCs and also deliver water. In the discussions with the ministry, one of the issues which gave rise to this was that a lot of it comes around to an "it depends" type of answer. In some places people have their own wells and obviously water isn't an issue. In Napanee, where I used to live, there's a spring in the park. Everybody can get water there if they need it. But if you're living in downtown Toronto it's a different kettle of fish.

One of the difficulties for both electricity and water in this type of a situation is not being quite sure what the ground rules are because it varies. Whether it's a hot summer or a cold winter or spring may affect the need for either electricity or water. A whole bunch of conditions can vary things.

We've tried to respond. I think the Municipal Electric Association's representatives have tried to respond, in the same way the bill has been put together, with a whole series of things affecting each other. They've suggested that electricity be viewed as the essential service rather than the danger and risk. They've then said, "Let's deal differently with the issue of bargaining unit employees." As was already mentioned, in most cases it would appear that the unions to date have not pushed for the use of their employees in those kinds of situations, nor would the managers support it usually.

The Chair: Thank you. Charles Harnick, QC, welcome to the committee.

Mr Charles Harnick (Willowdale): Thank you. I appreciate that. Dealing with the purpose clause for a moment, I recognize that it's a matter of balance that we're concerned with, and it's primarily subsections 2.1(1) and (2) that you're concerned with. What do you think the ramifications of leaving those sections as they now stand in this act will be some years down the road?

Mr McCaig: I'll turn that over to Jim again. There are other opinions across the table, but we'll start with Jim.

Mr MacKenzie: The concern we have with the purpose clause is that, as Doug has already mentioned, by placing it within the act itself, as opposed to the preamble where it currently is, when issues go before an arbitrator, an arbitration panel or the Ontario Labour Relations Board, they have to deal with that when they're dealing with other aspects of the act. It certainly will impose itself on the rest of the legislation much more significantly than the current preamble.

Subsection 2.1(2) talks about:

"To encourage the process of collective bargaining so as to enhance,

"i. the ability of employees to negotiate with their employer for the purpose of improving their terms and conditions of employment."

It suggests to us that, quite frankly, when employers are either trying to negotiate a set of conditions which may result in some concessions or some drawing back from a current set of conditions under a collective agreement, or wanting to maintain the status quo in terms of the collective agreement, the employees through the trade union can look at that and can certainly take this to the board and say that the employer is bargaining in bad faith, and that is certainly a significant concern for us.

We don't know how an arbitrator or how the board is going to deal with this particular part of the legislation. Once you have it in the act, he or she or the board has to deal with that as part of the act. It really covers the rest of the act and we're really quite concerned about that.

Mr Harnick: My concern is that if you go ahead and put this even in a preamble, as you're suggesting, you're still recommending a situation where bias can be prevalent in terms of the mind of the chairman of the board. My feeling is, and I'd like your comment, that one of the things we could always appeal, by way of a decision of the labour board, was a decision where we could prove bias. Now what you're doing is you're statutorily creating a situation where bias is okay. It seems to me to be contrary to every rule of fundamental fairness and procedure that we've always operated under, particularly in the development of boards and tribunals in Ontario. Do you have any comment about that?

Mr McCaig: I think we have to look at that word "improve." Nothing guarantees that every time you walk into negotiations, situations are going to improve. I can remember when I was 18 years old in a paper mill. That particular paper mill, owned by Amanda, went on short time. We negotiated with the company, and we went down to four days a week, 32 hours a week, so we could all work.

The situation does not improve every time you walk into negotiations. You have to take into consideration what is happening in this province with the recession. Some of you people who are with the Ministry of Energy are very much aware of the energy conservation program. If in fact some of the goals were reached and some of the substitutions went into effect, there's a very distinct possibility that some of the utilities would have to negotiate. Some of the smaller utilities, particularly in the north, are going to have to negotiate something down, perhaps to avoid layoffs. If every time you use the word "improve" it's going to be left open to someone else to interpret it, God only knows what happens five or 10 years down the road.

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Mr MacKenzie: Can I perhaps get back to the question as well? In summary, I would agree with you. If you look at our brief and the comments our chairman made earlier, I think we have not suggested that the existing wording be taken out and become the preamble. We have

suggested several options for the government and this committee to consider which would amend the wording to reflect, I think, the unbiased nature the board should conduct itself in.

We think the real purpose of the act, as stated in the existing preamble, is to provide a harmonious environment for employees, trade unions and employers to operate in. It allows for negotiations and joint problem-solving, and that's what we think the bill and the act should focus on. The existing wording does a lot more than that.

Mr Jennings: One of the last points on this that a number of our people raised was the question of how the words would be interpreted, particularly if it's kept in the bill. I hadn't thought of it, but with regard to, for instance, the increased employee participation, which isn't focused on very much, five or 10 years from now could that mean that a union which resists employees serving on some committee would be bargaining in bad faith? I'm sure that's not the intent, but the way the words are, there is some question of interpretation that could cause problems.

The Chair: Mr Jennings, Mr MacKenzie, Mr McCaig and Mr Matthews, we want to thank you for appearing here today on behalf of the Municipal Electric Association. You've made a valuable contribution and we thank you for taking the time. Take care.

ONTARIO PROVINCIAL COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

The Chair: The next participant is the Ontario provincial council of the United Brotherhood of Carpenters and Joiners of America. Please come forward and seat yourselves. There's coffee—fresh coffee, as a matter of fact—and soft drinks at the side of the room, so you can make yourselves feel comfortable. Please partake.

As well, the committee has just been provided with the August 11, 1992, memo by our research officers, Avrum Fenson and Anne Anderson, which analysed the data coming out of Quebec both before and after its anti-replacement worker legislation, comparing it to a similar time frame in Ontario. I trust that will be the subject matter of a whole lot of commentary and discussion. As with other documents, members of the public can obtain this by writing to the clerk of the resources development committee at Queen's Park.

Gentlemen, please give us your names and titles, if any. Proceed with your comments. We've got half an hour. Please try to save the second half for exchanges and questions.

Mr David McKee: Mr Chair, we'll be quite brief. My name's David McKee. I'm counsel to the Ontario provincial council of the United Brotherhood of Carpenters and Joiners of America. Quintin Begg is the president of the Ontario provincial council and Bryon Black is the secretary-treasurer of the OPC.

Our comments tonight will be quite brief. They're being distributed now. Much of that is material that I don't intend to cover tonight. They are submissions that have been made earlier to the minister, and I'll refer to them later for a specific purpose.

Before I begin, perhaps I can explain who we are. The Ontario provincial council of the united brotherhood is the provincial coordinating body of the union, representing 23 carpenters' locals and eight millwrights' locals in the province of Ontario. The combined membership is roughly 23,000 carpenters and millwrights, making the united brotherhood one of the largest building trades unions in the province.

The Ontario provincial council of carpenters wishes to state that in our view the proposed amendments to the Labour Relations Act are fair and reasonable. They address areas that have cried out for reform for many years and, if adopted, should expedite the resolution of any labour problems and encourage cooperation and dispute resolution.

However, and I don't mean this critically, we would point out to this committee and to this government, and more particularly perhaps to the employer groups that have criticized Bill 40, that there is little, really, that is new or innovative. Most of the provisions and the concepts in Bill 40 have been part of the legislation in other jurisdictions in this country for years.

I'm afraid I haven't had the opportunity of seeing the hot-off-the-press, up-to-date data from the province of Quebec, but certainly the replacement worker provisions contained in the proposed section 73.2 are simply a detailed statement of the principles contained in the Quebec labour code and enunciated by the Quebec labour court over the years. Our anecdotal information, which of course isn't nearly as detailed as the statistical information you have, is that lo and behold, businesses continue to function in the province of Quebec. That has not spelled the end of any commerce east of the Ottawa River.

Similarly, the struck work provisions in an earlier portion of proposed section 73.1 have been part of the Canada Labour Code for the past 20 years. Again, business hasn't ground to a halt in the airlines and other transportation industries. The successor employer amendments to the Employment Standards Act reflect, in fact, although not in a statutory form, the jurisprudence of the Quebec labour court on successorship in a general fashion. It is much more restricted in Bill 40 but it is not a new concept. Again, businesses have continued to operate in the province of Quebec.

Finally—and this gave me some concern when I realized it—the so-called increased power of arbitrators to deal effectively with the real substance of grievance disputes is something that could even be found in various BC statutes, both before and after they were revised by the Vander Zalm government. It made me think that perhaps something had gone wrong here, but in fact I think all it represents is a level of common sense that appeals to a wide spectrum of political views.

Our response to the employer groups that have criticized Bill 40 is that there is nothing in this bill that is going to hamper your ability to do business in Ontario. These concepts, these provisions, didn't cause industry and commerce to grind to a halt in Quebec, in British Columbia and in the federal sector, that is, unless an employer's idea of efficient operation is that giving any rights at all to workers to organize and bargain collectively is hampering

business. None of the concepts in Bill 40 have caused businesses to flee any one particular jurisdiction, be it Quebec, BC or otherwise, nor, in our view, will they cause any such flight of business from Ontario. Indeed, if Bill 40 does discourage investment in Ontario, which is the other threat that has been made—that is something we doubt very much, but if that does happen it will be because of the scaremongering and distortion of what is contained in Bill 40 rather than because of anything of substance in this bill.

To this government, and hopefully at the end of the process to the Legislature, we say congratulations on recognizing and addressing the issues contained in Bill 40. What this does, we recognize, is to bring Ontario legislation in line with some of the more progressive labour legislation in Canada. While you are to be applauded for that, Bill 40 is hardly the end of the matter. There is room for innovation, there is room for further reform.

What we as a union active primarily in the construction industry note is that there is a number of issues relevant to the construction industry which are not addressed in Bill 40, nor are they addressed in Bill 80, which obviously we are not going to deal with tonight. That is really an internal matter rather than dealing with broader labour relations issues. Quite frankly, the needs of workers and unions in the construction industry have been somewhat ignored in Bill 40.

What I have attached as an appendix to these comments are submissions that were made to the Minister of Labour during what seemed to me to be a long consultation process, hardly one that has been rushed. It contains a discussion of issues that the Ontario provincial council believes must be addressed at some point in the process of labour law reform.

Again, just to outline them briefly, because I don't propose to deal with them here tonight, the issues are in summary:

1. A need to tighten by legislation the fairly broad exceptions to the related employer provision of subsection 1(4) of the act. This is a provision which is of crucial importance in the construction industry. Employers are basically possessed of few, if any, fixed assets, and for good commercial reasons have multiple corporate vehicles, so that is of crucial importance in this industry.

2. The need to give the labour relations board the power to require unions who are reluctant to become involved in private jurisdictional dispute tribunals to join the bandwagon, so that we're not left with two out of 13 trades that refuse to participate and thereby bring a private process to a halt.

3. The need to give construction trade unions back the power to decide their own ratification procedures, because those are defined in the act in certain circumstances.

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4. The need to redefine "strike" so as not to penalize workers who are confronted with an employer who just isn't paying all of the wages. If my contributions to a pension and welfare fund aren't being made, I can quit; there's no problem. But if I say to you, "I'm not going to do any more work until you make those payments," I am on strike. The reality is that that may be the only leverage

I've got with an employer who is going to disappear after the project is gone.

However, much as we believe those issues are important, we recognize the realities of the legislative process and we also recognize the need to complete debate on what already exists in Bill 40. Accordingly, we do not seek to add these further issues to the discussion at this time but we do wish to highlight them for this committee and for this government so that we are all aware of what further work lies ahead beyond Bill 40.

In summary, we support Bill 40 as a good beginning. We say to employers that your fears are unfounded and your criticism is unjust, and to this government we simply say that Bill 40 represents a good beginning but there is much more to do.

Mr Offer: Thank you for your presentation. I'd like to get a clarification prior to getting into some questions on your presentation.

In your commendation for Bill 40, you've spoken about a submission—and you've attached to your presentation—made to the Minister of Labour in February. Forgive me, but I've been moving fairly rapidly through that. It appears that the issues which you brought forward in your submission to the minister of February 1992 are not contained in Bill 40. I'm wondering if you can help me out on that.

Mr McKee: I didn't draft Bill 40 so—

Mr Offer: No, no. I haven't been able to go through it in the time we have here, but when I do go through it I want in my mind to be able to characterize it as issues which are important to you but in essence are not matters which are yet contained in the changes to the Labour Relations Act.

Mr McKee: That's correct; that is, they aren't dealt with positively or negatively, they're simply issues that remain to be dealt with.

Mr Offer: Dealing with the first part of your submission, you've spoken about the powers of the board. I believe that is a very important area; it has been, as we deal with these hearings, addressed by more and more individuals. I would like to get from you an expansion on your thoughts as to the powers of the arbitration board to deal with the substance of the issues and whether, in your opinion, that really does seem to fly in the face of due process.

Mr McKee: I would find it odd to think that someone who deals with the real dispute and the real issue that has caused parties to be at odds is somehow flying in the face of due process. I have certainly been in the position where, for one reason or another, someone is trying to revive something that died two years ago. Even under Bill 40, I would not expect an arbitrator to listen to me for very long. Remember, we're in the construction industry; two years ago means that the job is long done, everyone is gone, the bills have been paid. And remember that, by and large, arbitrations in the construction industry are done by the labour relations board itself. So in theory you could say, yes, we'll go back two years; in practice, nobody is that insensitive to the realities of the world.

Issues of timeliness and issues of process through a grievance procedure aren't big issues in construction industry grievances. Most collective agreements have a fairly limited process and fairly lengthy time limits. In fact, there are times when my clients or I have missed those time limits and nobody really gets particularly concerned. It's a commonsense world we operate in. If it were two years ago and everyone's gone, no one is going to listen to you; if you missed it by a few days, there's no real prejudice. So I don't see that as a problem of due process.

Mr Offer: I understand the example you bring forward, which is a time limit of two years' expiration—

Mr McKee: No, I don't have any grievance with two-year limits, believe me.

Mr Offer: I understand the example that you bring forward. None the less, when we talk about a piece of legislation and its general application, I'm wondering if there is a concern that you have that the types of issues might be a touch finer than the type of example which you've brought forward, where for one party or another there may be a real problem that has been brought forward because of this unlimited and, in many ways, undefined type of powers given to the arbitration board.

Mr McKee: Again, it's difficult to hypothesize without particular concrete examples. I think the way most arbitrators, whether it's the labour relations board sitting as an arbitrator or private consensual arbitrators, deal with that kind of problem when there isn't a specific statutory or contractual limitation on their jurisdiction is to say: "Look, what makes sense here? Are you prejudiced by the fact that this happened two years ago? If you are, and you can demonstrate that to me, then fine. McKee, why should I listen to something that happened two years ago?" I've had that said to me and I've yet to think of a good answer, frankly.

Mr Harnick: This question may, on the surface, seem a little out of sorts, based on the recession and particularly the way it's hit the construction trades.

Let's go back to a period such as 1983 to 1986, when employment was, particularly in the carpenter trades, I believe, almost full employment. Let's say we have a situation of a strike under the circumstances set out in Bill 40, where the employer really can't carry on his business because of the strikebreaker provisions. We have also a situation of full employment, a situation where carpenters might be on strike at one job but it's pretty easy, because of the demand for carpenters, to get other jobs while the strike is going on. In order to level the playing field so that everybody is facing the same difficulties during a strike, would you see anything wrong with an amendment to this legislation preventing workers who were on strike from obtaining alternate employment in the trade in which they're on strike?

Mr McKee: I think that yes, we would. The reality of strikes in the construction industry—and certainly province-wide in the industrial-commercial and institutional sector there have been strikes in 1978, 1980 and a number of times during the 1980s—is that job sites shut down. That's what happens in construction simply as a matter of

practice, for any number of practical rather than legal reasons.

What that means is that in a particularly long strike—people have to pay the mortgage. They have to pay the rent. They have to buy food. They will work at other jobs, which may or may not be carpentry jobs, during that period of time.

Mr Harnick: Do you not think that employers have expenses? They may have a mortgage on the building. They may have a mortgage on the equipment. They may have a mortgage on the vehicles. They may have other staff whom they want to retain, who have to be paid salaries. Why is it not a level playing field? Why is it not equal for one as it would be for the other?

I think, if you'll just let me finish, your attitude typifies the very unbalanced approach that I believe this legislation indicates: the fact that the playing field for the worker can't be the same level playing field as the playing field for the employer. I don't understand why everybody can't live under the same rules. You really haven't touched on that, because the employers have expenses as well.

Mr McKee: Two responses. First of all, you're assuming a vast and endlessly available amount of work.

Mr Harnick: No, I'm just saying there are times when you might have full employment.

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Mr McKee: Yes, and what I'm saying is, that doesn't mean everyone who's on strike can't also work elsewhere. That isn't going to be an opportunity in the real world available to every single member of the carpenters' union who goes out on strike.

Yes, I recognize that employers have expenses, continuing expenses. Again, it's somewhat different in the construction industry where you don't have a vast amount of fixed assets. There may be problems, and I don't mean to minimize them. There are problems for owners who have mortgage payments that have to be made or loans that have been extended on the expectation of a tenant occupancy by a particular date, but there is a difference between saying what happens to the financial health of this company and saying what happens to the physical health of my children. We're not talking about putting food on the table of a corporate entity the way you're talking about putting food on the table of a carpenter or his or her family.

Mr Harnick: I beg to differ, you know, because I can certainly see that when the company is going broke, the people—the managers who work there, the white-collar workers who run the office, the secretaries, as the company cannot generate any more income and they use up their reserves—go hungry too. So why is it that only the union can go out and find other jobs as they were able to do in 1983, 1984, 1985? But I've heard your answer and I respect what you say while I don't agree with you.

The other question is, this legislation is silent in terms of dealing with some of the democratic rights of workers, the right to have secret-ballot voting on certification, whether an offer is a good offer. Do you not think this legislation and workers in this province would be well served if we had enshrined in this legislation those very

basic democratic rights that almost all organizations, save and except for trade unions, have available to them? Would you have any objection to that?

Mr McKee: I won't rise to the bait at the end of that question. The democratic right of workers to organize is enshrined in the current legislation and will still be there once Bill 40 is passed; that is, a majority of employees must decide in favour of a union before—

Mr Harnick: What about the secret ballot?

Mr McKee: Why would you assume that a secret ballot is the only way of registering the views and wishes of an employee? You and I have something in common, I suspect: We're both members of a political party. I became a member of a party the same way you did: by signing a membership card. I would find it offensive if someone told me I was too stupid or that you were too stupid to know what you were doing when you signed it. Why wouldn't you extend that courtesy to every worker in the province of Ontario?

Mr Harnick: It's one thing to join an organization; it's another thing to have the opportunity to vote. If you're going to try and tell me that there is never coercion, that there is never anything hanging over a worker's head—

Mr McKee: Employers do it all the time.

Mr Harnick: —there are never divisive issues, there are never problems within trade unions that would perhaps cause someone some discomfort to really speak their mind, what do trade unions have to lose by having a secret ballot?

Mr McKee: What you're saying is that you prefer that way of having an employee express his or her wishes about union representation. You then moved on to, well, what about the union member who's a member of a union and doesn't like what's going on inside that union? That's a matter of internal union affairs, something—

Mr Harnick: Well—

The Chair: And that's an appropriate time to turn the floor over to Mr Ferguson, who's already given you a couple of minutes of his time, Mr Harnick.

Mr Harnick: I appreciate that, Mr Ferguson.

Mr Ferguson: I hope we didn't drag Mr Harnick off the beach for this. I certainly would support sending him back.

The Chair: Mr Harnick is welcome here.

Mr Ferguson: Absolutely. I do want to welcome the gentlemen here this evening. We certainly appreciated their short but concise presentation to the committee.

Some of the members of the committee who were here yesterday may recall that the learned professor talked at length about individuals being able to offer their services if, in fact, they found themselves in a strike position. It was their opinion, and I think it bears repeating and is worth repeating, that the only asset a worker has to offer is his or her labour. A lot of companies out there have assets as well, and while a worker can sell his or her labour, a company has the option of selling its assets as well during

a strike if it so desires. There is a big difference here, Mr Chair.

I want to get on to this whole question of investment. I'm sure you gentlemen will not be surprised to learn that the Council of Ontario Construction Associations as well as the employer coordinating council obviously disagree with your position.

Mr McKee: We've heard their views.

Mr Ferguson: You heard that. They have suggested that employers and workers of Ontario—this is a quote from their letter—do not need the government meddling in their relations. In your view, is this government meddling in your relations with the various companies you have contractual obligations with?

Mr McKee: From the perspective of construction trade unions, it doesn't affect to any great extent relations between employers who are bound by existing collective agreements and the united brotherhood. Those relationships will continue on much as they have continued on, and I don't see anything in Bill 40 that's going to significantly affect that.

Mr Ferguson: Some of us are having a little bit of difficulty with this whole investment perspective, because we have heard a number of times that it's going to affect investment in Canada. If you can trust Statistics Canada, on February 27 it released its public and private investment table, which indicates that some \$20-billion worth of investment came to Ontario in 1991. That's out of \$45 billion across the nation as a whole. So we're having a little bit of difficulty with that, and I'll explain further.

Continually we are hearing from representatives and delegations before this committee that they have talked to a lawyer, who spoke to somebody else and perhaps acted on behalf of a third party, that a company has decided not to locate here in Ontario because of what it perceives as a potential problem maybe possibly down the road with the Labour Relations Act. You represent 23,000 people out there across the entire province, no doubt working in a number of projects across the province. My question is this: Are you aware of any projects that shut down once we announced our intention to amend the Labour Relations Act? That's my first question.

My second question is this: I know you have affiliates across the country. Included in that, of course, would be Quebec. Back in 1978 Quebec brought in its legislation, which this is obviously modelled after and similar to. Are you aware in that province of any companies or firms or construction projects that came to a grinding halt because the government of the day decided to change the rules on how employees and employers ought to relate to each other?

Mr McKee: I think the reference to the province of Quebec is particularly apt. The position of building trades unions under the Quebec labour code is far stronger than it is under the current Ontario Labour Relations Act, and will be even if everything in Bill 40 is added to the Labour Relations Act. There is virtually no non-union construction in Quebec. That can't be said of Ontario.

Certainly those measures and the obligation of every construction worker to designate a union to which he or she would pay dues were something designed to put an end to fairly endemic struggles and violence in the construction industry in Quebec. That happened in the early 1980s. Quebec did just as well as Ontario and the rest of the country during the late 1980s. Its construction industry was just as strong as in Ontario.

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Yes, we represent 23,000 people. A lot of those people are unemployed. A very large percentage of those people are unemployed. They're unemployed because of a recession, because of a free trade agreement, because of any number of things. They are not unemployed because there is a bill before this Legislature.

Quite frankly, to get back perhaps to your first question, the reason you hear so much about investment from COCA is that it isn't really affected particularly. That may be a complaint we have. They aren't particularly affected by Bill 40, so they're simply saying, "This is bad for other people and we build their buildings." But the fact is that they're pointing to harm to somebody else, not to themselves.

The Chair: I've got to interrupt and say thank you to the Ontario provincial council of carpenters. Mr Black, Mr McKee, Mr Begg, we appreciate very much your taking the time to be here this evening, preparing, as you did, submissions which I'm sure will be valuable to all members of the committee as they deal with this piece of legislation. We thank you for your interest and trust that you'll keep in touch.

Mr McKee: Thank you.

The Chair: Thank you. Take care.

MARION THOMAS

The Chair: Our next participant is Marion Thomas. Ms Thomas, please seat yourself. There were over 1,100 groups and individuals who applied to participate in these hearings. So far, because of the five-week schedule of the committee, in excess of perhaps 240 or 250 will have been accommodated. Priority has been given to groups, in view of the fact that they represent numbers of people, not necessarily large but at least numbers. You are one of the few individuals and we're interested in hearing what you have to say. If you want to tell us a little bit about yourself before you start your submission, feel free. Do it in whatever manner you wish.

Ms Marion Thomas: First of all, I really appreciate the opportunity of being able to speak with you tonight. I didn't know if I would be able to. I know how difficult it is to get into a hearing of this sort, so I really appreciate the opportunity.

My name's Marion Thomas. I am a former IBM part-time employee. I believe that I lost my job as a direct result of the proposed reforms to the Ontario Labour Relations Act. I would like to thank you for the opportunity to speak this evening to tell you about my experience. The events that led to my appearance here today I hope will

reveal the necessity of changes to the Ontario Labour Relations Act.

IBM is a large corporate company that believed in respect for the individual, and this belief has always looked after employees, to the extent that unions have never been a serious consideration. I had been employed by IBM as a contract temp on call, working almost full-time from 1980 to July 1989.

This was a choice decision. As a busy mother with young children, it allowed me to give both the job of caring for my family and my career at IBM my best effort. I was able to schedule my family commitments to best mesh with work requirements. When necessary, specifically at year-end situations, I put in hundreds of hours of overtime, to the detriment of my family life. I felt I had an obligation to a company that rewarded me with recognition and substantial remuneration for a job well done. In other words, the job responsibilities did come first.

Contract positions were usually for a one-year term, with theoretically a two-year break between assignments. I always worked beyond these guidelines, in one particular instance from June 1985 to July 1989 continuously.

The problem with this arrangement is that one never knew from one day to the next how long it would continue. By this time, I was also realizing that I needed some stability in my life. My family had grown and I needed the security of a pension etc. I applied and was accepted into the category of a special part-time employee in August 1990.

The creation of a special part-time status had won sound approval from both employees and management. In a nutshell, employees would work 50% of the time and receive 50% of the benefits afforded for full-time personnel. An outline of this program appears in *Insight*, an IBM publication, of April 1991. This article describes how IBM has responded to the needs of employees to balance careers, home and community demands.

Many full-time personnel jumped at the opportunity. While I don't have any statistics to back up this statement, it would not be unreasonable to assume that the greater majority are mothers with children. I believe we had a false sense of security in that we thought that if we performed our job well and the position was still required, our future was assured. I don't believe this was an unreasonable assumption. It is unfortunate we didn't heed the warning in the last paragraph of this article. According to Pat Reiniger, "The needs of the business must be met and our practices in adapting to employee needs must also consider the need to remain productive and profitable."

In November 1991, the needs of the business—in other words, productive and profitable—emerged the winner. Under the guise of downsizing, approximately 300 special part-time employees were informed that their services were no longer required. Unlike their full-time counterparts, no package was prepared to inform the employees if or how much their severance would be.

It was mid-January that I discovered I was entitled to nothing. For others who had converted from full-time to special part-time it was worse. They received one week for every year instead of the two being offered to full-time

employees. Then it was calculated at 50% of their weekly salary; in other words, approximately 25% of their enticement to retirement package. Employees who had many full-time years were sincerely regretting the decision to convert to part-time. I personally viewed this as an attack specifically targeted at women with children.

I realized that IBM was suffering the same effects from recession, GST and the free trade agreement that were hitting almost all Canadian businesses, but I could not understand why they were cutting their lower-paid employees, employees who were only paid for time worked, and I kept wondering who would do the work. I was told it would be done by full-time staff, but I doubted this.

Towards the end of February it became apparent that I was correct. Indeed, many special part-time staff are still working at IBM, doing the same job at the same rate of pay, reporting to the same manager. The only difference is that now there are no benefits, no pension plan, no pay for IBM floater holidays and remuneration is provided by a third party; in other words, their contractors.

I don't believe IBM did this just to avoid paying a few benefits to a few employees, although there is possibly some merit to this. I do believe this was damage control in that IBM perceived that this group of employees might take advantage of the new labour reform laws to form a union to represent them. Indeed, had it been easier to organize, I'm certain this action would have been initiated.

In this regard, I believe it is essential, for employees who want a union to represent them, that employers be required to provide a list of employees, their home addresses and a designated area close to the workplace for union organizers to communicate with employees.

In March 1992, an article in *Toronto Computes* describes how 100 high-tech companies represented by CATA, Canadian Advanced Technology Association, affiliated themselves with Project Economic Growth, now representing more than 400 Ontario companies, to form a coalition opposed to labour reform. Surely employees should have the same right to unite to better represent their position.

There has been much discussion in the news lately about the lack of consumer confidence. Housing prices and mortgage rates are the lowest in many years, yet few are buying. In my opinion, this is a direct result of the preferential practice of hiring contract workers to be replaced in a few years' time with yet another contract worker.

The unfortunate result of this is that without the security of full-time employment, the people performing these jobs are unable to obtain mortgages. They live from contract to contract without pension or sick benefits. It's no wonder they have no confidence. Representation by a union can definitely have an impact in this regard and ultimately this would be reflected in renewed economic growth.

Ms Murdock: I want to thank you very much for appearing and taking time out. One of the benefits of night sittings is that we are able to hear from a lot of the women's groups, because actually that's what's been happening.

Ms Thomas: Yes, it is, most definitely.

Ms Murdock: We've had representations from the Child Care Coalition and we'll be hearing later on tonight. It's about the only time most women can appear. So I thank you for taking that time and for putting this together.

I would like to get, first of all, the distinction between contract employees and part-time employees because it's evident from your presentation that as a part-timer you could have organized under Bill 40 and you can't now; is that correct?

1940

Ms Thomas: Actually, I would think it's impossible to organize now in there because the women who have remained behind are now working for another company. They are essentially contracted to IBM but they're paid by a third party.

Ms Murdock: Okay. I want to go to the bottom of page 3, I believe, in terms of providing the list of employees, their home addresses and a designated area close to the workplace. We've had a number of presentations—I believe one from the independent grocers—that were quite concerned about producing a list of employees' names, particularly where most of the employees were women, and having that out there available to people who are not the employer or for reasons of deductions and so on. Could I have your views on that?

Ms Thomas: I can understand the concern for safety but you have to understand the large framework of a company the size of IBM. Actually, until I read this article, I didn't even know there were 300 special part-time people at IBM, so it's very difficult to get any idea of contact; if that can't be possible, perhaps communication within the system, within IBM. I'm sure there are other companies with similar setups. A list of names without addresses; but that would mean you would be infringing on the employer's time, to communicate with these people. How do you contact people when the organization is so big if you don't have a list of names and addresses?

Ms Murdock: One of the suggestions, which is not in Bill 40 but was originally in the discussion paper, was access to the employer's property for the purposes of organizing. During the consultations, we heard numerous presentations that really frowned upon that whole aspect and so it is not in Bill 40; it is not part of the amendments. Am I hearing you say that you think they should be allowed to organize on the employer's property?

Ms Thomas: I would think that would be an infringement of the employer's rights, but perhaps an area of the parking lot or something like that. I can only really refer to the situation at IBM as I know it. I wouldn't think it would be fair to be using the employer's time; that's my personal opinion.

Ms Murdock: Good. I want to thank you again. I don't know if anybody else has any questions.

Mr Fletcher: Thank you for appearing today. I was just curious, as far as your opening statement is concerned, about when you said, "I believe I lost my job as a direct

result of the proposed reforms." Would you tell me why, other than going right back into your submission?

Ms Thomas: What I was trying to say is that there are no IBM special part-time people left. They are still working there but they're employed by somebody else. I don't think the numbers changed significantly at IBM in spite of the 2,000 people who disappeared or who were supposed to disappear. Essentially, what they became were contract workers for another company. So now you'll have one manager with 12 people reporting to him, but of those 12 people maybe only five of them will be IBMers. The remainder will be working for different companies or maybe on one-year contracts.

Essentially I think that even if a union were formed and a strike were called, IBM could still function quite well with the remaining employees from other companies, and the full-time employees were treated very fairly.

Mr Ward: One quick question: Do you think it's fair what IBM did to you and the others?

Ms Thomas: No, but I think there were other cases that were much more unfair. I did have breaks in service during that time frame.

Mr Ward: I don't know if you can answer this or not, but what effects do you think it had on the people who were let go and their families?

Ms Thomas: It was a very stressful situation, especially for women who had converted from full-time to part-time. Had they stayed two or three more years as full-time people, they would have been eligible for a very substantial severance package. They felt they'd been suckered is what it came down to.

Mr Ward: By IBM?

Ms Thomas: Yes, just suckered into taking a program that allowed them to strike a balance and then out the door.

Mr Offer: Thank you for your presentation. I was going through it with my colleague. You started off as a contract temp.

Ms Thomas: That's right. I worked as a temp on call but I worked there full-time. It was just a status that they had.

Mr Offer: But as it turned out, for whatever reason, it was almost like a full-time position but it was still contract temp?

Ms Thomas: That's right.

Mr Offer: Then you made a choice to go from contract temp to special part-time. I think that was done for family reasons. Isn't that what you said? Instead of being full-time, it was just special part-time?

Ms Thomas: No, I was looking for some stability. I wanted the pension benefits. I realized I'd worked all this time and really had nothing put in the bank to show for it. This program existed, but initially, when it came in, the jobs that were available in this program were basically answering the telephone and the somewhat more menial jobs, and I wasn't really interested at that time. Later on, they expanded to incorporate jobs that were a little more demanding.

Mr Offer: If you'll pardon me, Mr Chair, I just want to try to get a real understanding of what in fact exactly happened, because I think this is very important. So just as you made that choice to go from contract temp to special part-time, I think you also said that there were some full-time that made the choice to go to special part-time.

Ms Thomas: Oh yes, that's right.

Mr Offer: And in the end result there were about 300 in the pool called special part-time.

Ms Thomas: That's correct.

Mr Offer: And then the 300 were let go.

Ms Thomas: That's correct.

Mr Offer: When you went from contract to special part-time, were you given an indication as to what you were getting when you went in there?

Ms Thomas: Yes. We still were required to sign a contract, and the contract was based on a yearly basis, but it also had indication that unless the business needs changed there was some stability in that job. I'd always had a good experience working for IBM until this point. To be fair to them, I was always treated with the utmost dignity and respect.

Mr Offer: I know what you've said in the submission. Is there something that maybe should be in the Employment Standards Act that would give you the type of protections you say are required, just to make sure that this type of disclosure and information is provided? Should there be something in the Employment Standards Act?

Ms Thomas: Essentially, nothing would have changed for me had I remained a contract worker and not gone to special part-time. But the implication is there that, by being special part-time and offering you benefits and offering medical, dental and all those things, there is some stability.

1950

Mr Offer: Do I have a few more minutes? Is there now the opportunity—I just ask this—to be again contract temp, to go back to how it started out, the position that you had, the contract temp?

Ms Thomas: I'm not certain if that exists or not. I know that all their part-time people are hired by different organizations. One is ISM. There were job offers through Burns Security. Some of the receptionists are working through Burns, but they're still doing essentially the same job. If the job still exists, there has to be a better reason for letting people go.

Mr Offer: I think you make a very good case. The thing that's running through my mind is the emphasis that when we hear this matter which you have brought forward, maybe we should be directing our minds to the Employment Standards Act just to make certain that the protection that should be there is there, and the enforcement agency that should be there is doing that job.

Ms Thomas: Actually, I checked with employment standards, and everything they did was legal. There is no recourse.

Mr Offer: Thank you very much.

The Chair: Thank you, Ms Thomas, for providing us with yet another very novel and unique insight into the working world and into what this legislation means to some people at least. Thank you kindly for taking the time to be here. You've provided a unique and valuable contribution.

Ms Thomas: Thank you very much.

The Chair: We trust you'll keep in touch with us.

Ms Thomas: I'll try.

The Chair: Good luck to you.

Ms Thomas: I'll be watching.

The Chair: As will, I hope, others, because these are public hearings at Queen's Park. We're at Toronto for the balance of the week, through till Thursday, starting at 10 o'clock tomorrow morning and then 10 o'clock Thursday. Of course, people are entitled and encouraged to come to Queen's Park, room 151, the Amethyst Room, to watch these proceedings in person. There are accommodations for them, among other things.

QUEBEC AND ONTARIO PAPER CO LTD

The Chair: The next participants are here. They are the Quebec and Ontario Paper Co Ltd from Thorold, in the heart of the Niagara Peninsula. Gentlemen, please seat yourselves in front of a microphone and give us your names and your titles, if any, with the company.

Mr David Strathern: A little show and tell.

The Chair: Good stuff. The one important thing is that somebody's got to keep close to a mike to be recorded.

Mr Strathern: That's fine. I'll speak sitting down.

The Chair: A copy of that same chart has been distributed to members of the committee.

Mr Strathern: No charge.

The Chair: Transcripts, by way of Hansard, of any of the submissions, including yours or any others, are available to members of the public free of charge by writing to the clerk of the standing committee on resources development here at Queen's Park or to any MPP's office. Similarly, copies of any of the submissions or reports that have been filed and form exhibits to these proceedings are available to members of the public. Most of them are extremely valuable bits of insight and research.

Mr Strathern: These have been handed out then?

The Chair: Yes, sir. Everybody has copies of the written material.

Mr Strathern: Okay. My name is Dave Strathern, and I'm the director of mill operations at Quebec and Ontario Paper in Thorold. My friend here is George Gasbarrino, and he's superintendent of labour relations.

We'd like to start by first thanking the committee for an opportunity to speak. We started some time ago, working through Marg Harrington in Niagara Falls, to make such a presentation. This is almost the third presentation we've made, so we're getting better at it, I hope.

After we presented to Marg, she suggested that we see Peter and the Niagara regional caucus meeting of the NDP members of provincial Parliament, and we gave a presen-

tation similar to the one we're giving today. It was through Peter's encouragement that we've come to this committee.

I'd like to start by introducing the company. Quebec and Ontario Paper was originally founded in 1913 by the Chicago Tribune and was built to supply newsprint to the Chicago Tribune, and expanded over the years from 1913 to a five-newsprint-machine mill in the 1950s. In the mid-1970s a decision was made that the mill either had to close or modernize because the equipment was getting old and non-competitive.

Around 1978 or 1979 a decision was made to modernize the mill and in 1982 a brand-new mill was built in Thorold. The two newsprint machines that were erected in Thorold, Ontario, were the only two high-speed newsprint machines built in Canada in the 1980s at one site.

In 1982, we also started recycling newsprint and became the first newsprint recyclers in Canada. At this point in the game we are currently recycling 60% of our fibre supply, or nearly 600 tonnes a day of newsprint is recycled in our mill. We're expanding to 750 tonnes this coming November, which will represent over 70% of the fibre supplied to the machines. The machines run approximately 1,000 tonnes of newsprint a day.

During all of this modernization, you can imagine that there was a downsizing of the operation and we shrank from about 2,300 employees, in the heyday of Quebec and Ontario Paper, down to the current manpower complement of around 700.

I've put up on the board here a little structure of the company and I'm going to get into that. This is the key element of my presentation here today.

Perhaps I should say a few words about myself so you know who you're listening to. I'm a graduate chemical engineer from the University of Toronto, and in fact I used to drink a few drafts over at The Bull and The Bear in 1970. That's gone now.

After graduation, I entered the pulp and paper industry, worked three years with CIP in Timiskaming, Quebec, in Dalhousie, New Brunswick, and in Gatineau, Quebec. I left CIP and worked with Nova Scotia Forest Industries in Port Hawkesbury, Nova Scotia, where I worked four years and one year additional in Sweden, and managed to pick up a second language while I was working there.

Then I moved to the southern climates of Kapuskasing, Ontario, and worked in Kapuskasing and became paper-mill superintendent of that mill. Of course, so many of you know Spruce Falls Power and Paper Co Ltd and all the anguish that this company has gone through over the last little while. It turned out that one of my lead hands in the paper mill, who was a millwright lead hand—I think his name's Len Wood—actually graduated to this august company that we have here today. Len and I used to argue about the maintenance on my paper machines and we also used to have a few drinks at the curling club together; it's been known to happen. In 1984, I came to Quebec and Ontario Paper as the director of mill operations and have been there ever since.

My presentation here today is on three issues. I'd like to spend about 90% of my time on the first and 5% of my time on the last two.

I'd like to suggest to the committee that Bill 40 is like a game of solitaire and you have to have 52 cards in the deck in order to win the game. If there's one card missing, you'll continue to play the game but you'll never win. I think that I have identified, in my wisdom, the missing card. My suggestion to the committee is that there needs to be a mechanism to manage a business that has multiple unions involved in it.

When I came to Thorold in 1984, we had 10 unions represented at that site. Now we have nine unions represented at the site. I handed out a little handout and I've put it up there on the board. Maybe I can refer to my notes just so I get the numbers right.

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We have 493 unionized workers at Thorold, represented by nine locals. As I indicate in my presentation, the 493 employees at the site are represented by 42 union executives who are members of the executive of the unions that are at Thorold, 15 union executives who are not employees at the site, and one of our unions has had the foresight to hire a consultant. The consultant is working on their behalf, and we get to speak to him regarding issues in one of the locals. We don't get to speak to our employees, we get to speak to the consultant, because the employees have designated the consultant as their spokesperson.

I thought was going to be an octopus diagram, but there are nine tentacles, so I think it's a ninopus you end up with here. The only thing lacking on this diagram is an arrow. There should be an arrow pointing outwards from each of these locals, because all of these locals are moving in different directions. As the director of mill operations, I have the enviable task of coordinating much of this activity.

I'd like all of you to have a chance to come and visit me. Any time you'd like to come and visit the mill, you're more than welcome. We've had Peter over a couple of times. In fact, Bob was over before he was—

The Chair: That's Bob, the Premier.

Mr Strathern: Bob, the Premier. I gave Bob the first piece of 100% recycled newsprint. We'd done an experiment the night before—purely coincidental—and I gave Bob the sheet of paper. I said: "This is the first 100% recycled newsprint ever produced in the province of Ontario; for that matter, ever produced in Canada. Should you decide to keep it, it might be worth something one day, and should you decide not to keep it, put it in the blue box and we'll convert it back into newsprint again."

The Chair: And it was a pristine, clear, white, untrammelled piece of paper.

Mr Strathern: Pure as the driven snow.

The Chair: It could have been the first and last time.

Mr Strathern: I'd like to refer back to my ninopus diagram here. We have three CPU locals that work out of the Thorold division: Local 35, which is the steam plant, has 24 members; Local 101, which is the papermakers, has 102 members; Local 84, which is a myriad number of operations types plus millwrights, has the largest number of members, 250. As you can see, they are all CPU locals except for Local 101, which has the consultant. We get to speak to the consultant because there's a bit of an internal

problem there; we're not quite sure what it is, because we're not allowed to learn that kind of stuff.

There's the International Longshoremen's Association, Local 1477. As you might expect, that local used to load boats at Thorold. The last boat we loaded at the Thorold mill was in the mid-1970s, 17 years ago. That's when the last boat was loaded. The president of Local 1477 retired in 1987 and continues to fulfil his role as president, so his current information about the ongoing activities of the business is somewhat restricted because he doesn't work there. The vice-president of Local 1477 is retiring in two months' time, on October 1, so they'll have two executives of the local who are retired and don't work at the company. But we continue to try to develop a working relationship with them.

UPGWA, Local 1971, is the plant guards. There are 10 of them, and of course they have some affiliation with General Motors. They have a plant guard union there. There's a local committee, but the senior executive of that local doesn't work at our company.

The plumbers and pipefitters union, Local 666—I think there was a book about that—has 39 employees. Those are the pipefitters, and of course they're part of a construction trades local.

Then we have the International Association of Machinists and Aerospace Workers, Local 268; there are 20 of them, and they're welders and machinists.

Then we have the IBEW, the International Brotherhood of Electrical Workers, Local 914; there are 30 of them at the site, and they're instrument mechanics and electricians.

Then the people who were two ahead of us—I didn't realize, but possibly one of the fellows is a member of the executive—the United Brotherhood of Carpenters. We have five members of Local 2737.

I'm not being facetious when I make this presentation. I see a lot of you laughing. It's not a laughing matter. As the director of mill operations, I have to try to establish working relationships with these people, I have to communicate with them so they understand what some of the issues are, and you can imagine that we are drawn from pillar to post with all these unions here. If we talk to one union: "Why didn't you talk to this union? How come you talked to that union first and you didn't talk to us first? We thought it was more important to us than them." No matter what we do, someone can sit back and criticize us.

With this number of executives, 57 executive members of the locals and one consultant, would someone please provide me with some guidance? You'll have a chance to ask me some questions later, so maybe you can help me out as to how to develop a working relationship with these people.

I attended a union-management teamwork conference held in Toronto about a year ago. This was unions and management coming together and talking about how to foster teamwork. I stood up and asked a question: "Excuse me, sir, could one of you people give me some advice as to how to deal with this situation?" I ran over the same list. The union president from the Dow Chemical workers' union in Samia responded on behalf of the panel members, "You've got a real problem."

So here we are, looking for help. Incidentally—I don't think I'll do this, eh, Peter?

The Chair: Be my guest.

Mr Strathern: Okay. I happened to bring the collective agreements along of all the locals we have. I won't pass them out because they're collector's items. That's what we have to work with.

These yellow ones are similar. "They're almost the same," you say; somebody's going to say that. "How come they're all the same colour?" Well, they're the same colour at their request. Should one of the locals decide to bargain separately from this group, off they go. That's what happened to the ILA; they used to belong to this collective agreement but now they have their own collective agreement, so now we've got to know what this one is.

Interjection: What is the other one?

Mr Strathern: This is Local 84, CPU. In this collective agreement, Local 35, they work 12-hour shifts, a very complicated schedule: one on, two off; two on, one off. That's CPU. This is CPU too; these guys are against 12-hour shifts. These guys are for it. These guys are against it. What do they stand for? These guys want six/three. These guys want five/two. These guys want an eight-hour work day. These guys want a 12-hour work day. We need help. It is only you and the opportunity that presents itself with Bill 40 that can help us.

I want to stress what the company's position is on unions, because some of you might be making the wrong assumption here by my frivolity. Our company has had unions since 1915; we are not anti-union at our company. We've got all sorts of unions at our company. We're not against unions. What we're against is the complexity that's created when you have this situation to manage.

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Incidentally, not wanting to ruin a good story by lack of embellishment, this is a union of accountants, which we don't have right now but which we might. This is a union of technicians, which we don't have right now but which we might. This is a union of clerks, which we don't have right now but which we might. And this is a union of engineers; I'm an engineer, but I don't think I'll join. I had one made up called Union of Supervisors but I tore that up because I understand that's been dropped, and we were very happy to hear that.

In the pulp and paper industry, competition in the 1990s has changed. It's not the good old days it was in the 1950s where, if you could roll the roll of newsprint, you could sell it in the United States for big money and make all sorts of money doing it. What's happened to our industry? The United States producers are taking over.

I saw this coming 10 years ago when I was in Kapuskasing. That bothered me up there. I could not get a straight answer from Kimberly-Clark, which owned the Spruce Falls mill. The question I asked was, "What are you going to do when salesmen go to these newspaper publishers in the US and say, 'Buy American, don't buy export Canadian'?"

Lo and behold, what has happened? The newsprint growth in North America is focused in the United States.

The use of virgin fibre in newsprint is dying. Why? Technology has changed. You can make newsprint out of garbage now. We do it every day. We collect it here in Toronto from the blue box program. You don't have to have virgin forest any longer.

Where's the best site for newsprint in North America? Dayton, Ohio, is the best location for a new newsprint mill. Why would anybody build a newsprint mill in Dayton, Ohio? You're close to Cincinnati, you're close to Cleveland, you're close to Columbus, you're close to Dayton, you're close to Pittsburgh. Why is that important? Because of all the waste paper that's down there. Bring it to Dayton, convert it into newsprint and send it back to the cities in the US.

Our industry is in trouble and we've got to react to that. How are we trying to react? Since 1984 our company has been trying to work on team work, employee involvement: "Get involved. Help us solve our problem." At one point we had eight of the nine unions involved in our quality improvement program and one out. Where do you think we are now? Now we have one union in and the other eight out. Why? For political reasons. What are they concerned about? They don't want management getting too close to the union workers. These fears have to stop.

I want to give a couple of examples of strife we've personally had at the mill. We took a one-day strike in 1987. The International Association of Machinists shut us down: 20 men. We lost \$500,000. We were down for about two days. All the other unions signed up; these guys didn't.

In 1990 we made the papers; we were pretty popular in 1990. In fact, I think we even got a little government funding on the waste paper storage. We were down for four and a half months at Thorold on strikes. As time goes by, it seems that the issue was more inter-union rivalry than it was anything we had offered at the bargaining table. Because I sat on the negotiating committee and I know what was said and what wasn't said. There wasn't a lot said, I'll tell you that right now, and we were out four months and so many days.

I guess I have a couple more minutes. I want to tell you some experiences we had on the picket lines at Thorold. I had the record: two hours and 10 minutes to get into work. We weren't shipping paper. We weren't making paper. We weren't doing anything. The salaried staff were trying to get into work.

Do you people want any videotape of police officers standing beside strikers drinking beer in the middle of the street? We've got it. That's there. Do you want see strikers obstructing the flow of traffic on a public highway? We've got that too. That's there. Somebody tried to smash my window out on my car. Why would they do that, a nice guy like me, director of mill operations, just trying to make a buck? It's hard to believe, eh, Peter? The reason they did that was that they were a little offended, because around November 15 we had to bring somebody in from the outside, one of our retired employees, who was the steam plant superintendent a couple of years before he retired. He was a man of about 68 years of age. We brought him in to start the steam plant up so that we could protect the jobs of the salaried staff.

I want to say a little bit about the replacement workers in Quebec. We had a strike at a sawmill in Quebec. The Quebec legislation has been held out that it solves some of the labour strife. We had the salaried workers who work at the sawmill going into work in a bus, and the bus was shot up with high-powered rifles. Bullets going through the bus: That's how peaceful the strike was.

If you've got problems with strife on the picket line, enforce the law.

I have one last thing I'd like to talk about, and that is security guards. Our position on security guards is that you can't have one person in a union rating on his brother. These people have got to be held separate.

What are we asking for? We're asking for help. We need some mechanism to allow unions to amalgamate in the workplace or we will continue to be in a terrible situation. We're budgeting to lose \$15 million at Thorold this year, and our company is budgeting to lose \$70 million this year. We've got problems, and we need help from the committee. That's all I have to say.

Mr Ferguson: I certainly appreciate your presentation, which has been most interesting. To be fair, I think all members of the committee certainly appreciate the problem you're faced with, and I can only think at this point you would be in support of giving the board the power, at the request of the company, to combine bargaining units.

Mr Strathern: I've read some of the language on that issue, and it seems that not only is it giving the board the power, but there's a little problem there. I understood, and maybe you can help me with this, that the workers themselves must show an indication or a desire to amalgamate. The workers must show that desire as well. I'm not sure if it's completely structured from without. If you're expecting the workers spontaneously to rally to one flag, I don't think it's going to happen.

Mr Ferguson: Can we just have legislative counsel clarify that? It was my understanding that when either side applied, the board would be able to make a determination and ruling on the matter.

The Chair: Do you want to sit beside Mr Gasbarrino, please, Mr Kovacs.

Mr Jerry Kovacs: If you look at page 5 of Bill 40, at section 8 of Bill 40, which sets out the consolidation provisions, you'll see in the very first subsection that the application may be made by the employer or the trade union. There isn't any further requirement of employee involvement.

Mr Strathern: That it be supported by one party or the other.

Mr Offer: They have to be represented by the same trade union.

Mr Kovacs: That's correct.

Mr Offer: The issue that has been so forcefully brought forward is that the provision under Bill 40 will not help the issue that has been brought forward and represented. There is certainly the right to combine units, and it can be at the request of either the employer or trade union, but the fact of the matter is that it must be the same trade

union, and what we have heard today is that we don't have one trade union; we have a myriad of trade unions, which is causing this difficulty. I don't mind referring to the bill, but the bill just, I don't believe—

The Chair: Mr Kovacs is speaking of its applicability to three CPU locals, so you're quite right in that regard. Mr Ferguson, go ahead. Thank you, Mr Kovacs.

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Mr Ferguson: Thank you for that clarification. Let me tell you, whether Bill 40 is before the committee today or not, you still face the problems that you face. It's the result of about 85 years of history that you are now asking us to deal with, to resolve problems that didn't occur as a result of Bill 40, nor did they occur as a result of the existing legislation. To be fair, it's something that's developed over time, which I think most of us would recognize is a pretty unfair situation to ask anybody to operate or work under.

Mr Strathern: Again, if this is being considered as legislation, this is the time to address this type of issue. We stress the position that we're not anti-union; we're just trying to get something that we can manage here, and it is damned difficult. I'd defy anyone to know everything that's in these agreements. My friends in labour relations don't even know that.

Mr Fletcher: This is a quick comment on that. I know you almost had another union with what was going on with the CPU in Bill 101, so you could have been with the International Woodworkers also. As a former CPU member, I know exactly what you're going through. I agree with you wholeheartedly that the labour movement has to get its act together and this sort of thing shouldn't be going on. That's something that has to be worked out also.

As far as consolidating the three CPU locals, that's a possibility. As far as the other ones—

Mr Strathern: We feel that's a very small improvement to what really needs to be attended to here, because I think that the concern is bringing some kind of representation to people who don't have it. We've got it coming out our ears.

Mr Fletcher: Yes, you have.

Mr Strathern: Can you imagine how inefficient that must be? You talk about overhead: 493 employees, 58 union executive. Is that overhead?

Mr Fletcher: I sympathize with you wholeheartedly, I really do. I honestly do believe, as I said before, it's about time that the house of labour got its act together also. Hopefully, what will begin to happen if you can get the three CPUs consolidated, and that's something that can happen, is that the others could start to fall in line. I'm not going to say it's going to happen overnight, but hopefully something will happen.

Mr Strathern: We'd like to encourage the committee to give the consideration to providing a mechanism so that they will fall in line, not that they might fall in line, because promises are not well received by the Chicago Tribune, which is our owner, and we, the Canadian operation, are going to lose as much money in Canada as the Chicago

Tribune is going to make in all of its operations in the United States.

Mr Fletcher: Let me just say this: If there's a way we can go along with this, then we'll certainly take a look at it and see what we can do.

Mr Strathern: Anything that I can do to be of help in that matter, just give me a call.

Mr Fletcher: You're an expert; we'll be calling on you.

Mr Strathern: I've got a pager; 127, day or night.

Mr Offer: Thank you for the presentation. I think we're clear that Bill 40 does not address the issue you brought forward, but that wasn't the only issue you brought forward. You were talking about playing solitaire and all of those things; when you took out the collective agreement it looked like you had a deck of 52. But you did bring up an issue of extreme concern and that was your personal experience during a strike, what it meant on the line. There are provisions here with respect to the prohibition of replacement workers. You have given us an example where there was the need in a strike to bring in someone.

Mr Strathern: To meet our obligations under the Boilers and Pressure Vessels Act in Ontario to run our steam plant to protect the facility while the strike was on— not to go back into operation, I might add.

Interjection.

Mr Strathern: Yes. We don't want the place to freeze or the bearings to rot.

Mr Offer: Have you seen that particular provision of the act which speaks to the exemptions to the prohibition speaking about the destruction of machinery, equipment or premises? Do you feel that, in your example, that may be addressed by this provision?

Mr Strathern: I felt that the conduct of the picket line was unacceptable. There may be provisions in whatever act you people want to pass, but if the police do not enforce the law, then we've got a problem. I believe that the problems at our picket line were driven by a failure to enforce the law—that simple. If the law had been enforced, it wouldn't have taken me two hours and 10 minutes to bring somebody in to work.

Mr Offer: I would like to thank you very much for your presentation. You not only bring forward very important issues but you certainly do it with a long history of the reality of what's going on. This will be very, very helpful to us. I just want to thank you for your presentation today.

Mr Strathern: It's important to hear what's happening in the trenches, because we're in a deep trench.

Mr Harnick: I too would like to thank you for your presentation. I think that you've attempted to come here and provide some balance to Bill 40. One of the things that you touched upon was your ability to maintain your commitments to your customers. Can you tell us whether this bill in any way will facilitate your ability, in a strike situation, to get the strike resolved any more quickly? And if the strike doesn't get resolved, what happens in terms of

your relationship with your customers and your ability to maintain those customers?

Mr Strathern: In our four-month strike we lost customers, as you might expect. We lost them to our American competition. I'm not an expert on Bill 40. I don't know all of the intricacies of Bill 40. I came here to the committee to address three issues. I'm an operations person. I am charged with operating that plant and getting the most out of it for the owner and trying to maintain peace and harmony and goodwill and all that kind of stuff.

I came here on behalf of Quebec and Ontario Paper to discuss our multiunion situation. I think I'd like to decline as to my in-depth knowledge of Bill 40.

The Chair: David Strathern and George Gasbarrino, thank you very much. You've made a very effective presentation. Your style and content has obviously left an impact on the members of the committee. We want to thank you for appearing on behalf of Quebec and Ontario Paper Co Ltd. We're confident you'll be following the process of this bill through the committee process and back into the Legislature, confident that you'll be keeping in touch with your own MPP as well as with other people on this committee who have demonstrated and indicated interest in the status of Quebec and Ontario.

Mr Strathern: Thank you, Peter, and I thank the committee very much for its interest on this item. It's an item that's very unique to our industry, our company. It is something that's restricting our ability to provide job security and growth. That's something that's sorely lacking in our province. I think that your committee and the work that's going on here provide a mechanism for that issue to be addressed. Thank you very much for your interest and the opportunity of hearing my problems.

The Chair: Thanks, gentlemen. Have a safe trip back home.

The next participant is the Coalition for Fair Wages and Working Conditions for Home Workers. Would the people who are going to speak on behalf of—as a matter of fact, anybody who is here on behalf of that group, come up and find yourself a seat at the microphone. There are coffee and soft drinks over at the side. Make yourself at home. You're welcome to and encouraged to partake of them.

We appreciate your patience in the fact that we're a couple of minutes behind schedule. But that's fine; you'll have a full half-hour, as you were promised. Your written material is being distributed and it will be made an exhibit to this committee process. Take a seat, please.

2030

Mr Strathern: Here, you can have that.

The Chair: Thank you kindly. We want to thank legislative broadcast for its skilful handling of the cameras during your presentation. It was a somewhat animated presentation by Quebec and Ontario Paper, and legislative broadcast lived up to its usual high standards in making sure none of it escaped the eye of the cameras.

I'll just mention once again during this hiatus that these are public hearings and that people are entitled and encouraged to come to Queen's Park and observe them. We're

back here tomorrow morning at 10 am and on Thursday morning at 10 am and sitting through until 6 pm. As a matter of fact, parking should be relatively simple around Queen's Park because the House isn't sitting. There's all sorts of spaces that can accommodate visitors who want to park in the MPPs' parking spots.

Mrs Francescatt: As long as you can fight it out with the guard.

The Chair: Well, you just tell the guard that you're with Ron Eddy's office and they'll take care of you.

COALITION FOR FAIR WAGES AND WORKING CONDITIONS FOR HOME WORKERS

The Chair: People, please tell us who you are, your titles, if any. Others, if you can hear a little better by coming forward and sitting in the front rows, come on up and tell us what you will. Please start.

Ms Deena Ladd: My name's Deena Ladd and I work for the International Ladies' Garment Workers' Union. I'm also involved in the coalition and I'm organizing a conference on home working for November.

The Chair: Yes, the Coalition for Fair Wages and Working Conditions for Home Workers.

Ms Ladd: That's it.

Ms Pik-Yu Tsui: My name is Pik-Yu Tsui and I am a home worker.

Ms Teresa Mak: My name is Teresa Mak and I'm a researcher of ILGWU, doing some home working and also some campaigning for home working.

Ms Cindy Wong: My name is Cindy Wong. I am a home worker.

Ms Sheila Cuthbertson: I'm Sheila Cuthbertson. I'm a staff lawyer at Parkdale Community Legal Services. Parkdale is also a member of the coalition.

The Chair: Welcome to all of you. Please go ahead and tell us what you will.

Ms Ladd: As you know, we represent the coalition and the coalition was formed in November last year, when a research study was released by the International Ladies' Garment Workers' Union documenting the conditions that home workers were experiencing. You have a copy of that research study. We've handed that out, as well as the original brief that we presented to the Minister of Labour last year in November. We've also included an article, "Sewing Pains," that came out in *Our Times*, which is a labour magazine. That should give you an idea of some of the experiences home workers go through, and of course we have our brief on Bill 40.

The coalition was formed basically because of the conditions home workers were experiencing. We felt it was an issue that definitely had to be addressed, and not just by the labour community but by all the communities. The coalition represents women's groups, visible minority groups, immigrant groups, community groups like Parkdale Community Legal Services, and of course different organizations that represent workers, like the Workers' Information and Action Centre of Toronto, the Chinese

Workers' Association and the International Ladies' Garment Workers' Union.

A lot of the stuff we've been involved in since we formed has been lobbying the Minister of Labour to address the issues in the Employment Standards Act which legislate a lot of the areas that home workers come under.

Bill 40 is extremely important and definitely needs to be passed. We applaud this committee for getting as much input as it has from the community, but it must remember that home workers are extremely vulnerable in terms of where they are in precarious employment. They're at the low end of this sector and are in positions where they can be extremely exploited. As you'll find, the research study showed this to a great extent.

We feel that Bill 40 does not go far enough in terms of legislative changes. The legislative changes will not make a big impact on immigrant workers, and especially women workers. We feel that the bill should be taken further and looked at in its original form in the original discussion paper. I guess we're going to be talking about a few of those legislative changes that we feel need to be addressed.

The reason we feel these should be addressed is that there are many myths around home working that a lot of people have. If women work in the home, there's this conception that women will have control over their own environment and that they'll be able to look after their children and do work; it's fairly relaxed and they have control. However, this isn't the case. In fact, it's the opposite.

Because women are isolated and forced to work at home by themselves, they have no contact, they have no bargaining power, they have no right to negotiate when they're given the rates they're given when they're doing piecework in the home. They're often very vulnerable to threats by contractors, and that is something we'll talk about later. That is why legislation addressing home workers needs to be stronger.

Home workers are forced to work in the home because of the lack of affordable child care in this country and also because there aren't many opportunities to get language training and many of these women do not have many English skills and are immigrants and very new to the country so they are forced to work at home. Also, we found that women with disabilities who often can't get work in the workforce are forced to work at home. Again, the bargaining power these women have is extremely little.

Also, in terms of the employers and the people who give work to home workers, in terms of the research study we did last year and the home workers we've talked to who have joined the home workers association, many of these women did not have any benefits that they're legally entitled to like Canada pension plan and unemployment insurance. Benefits they should be entitled to such as minimum wage and vacation pay and good health and safety conditions they do not have. I think that illustrates just how vulnerable they are and just how much legislation is needed to protect them.

Ms Mak: We have two home workers here and maybe they can talk about their feelings and their working conditions. The first one is Kitty Tsui. She has been a home worker for a long time.

Ms Tsui: Hi everybody. My name is Kitty Pik-Yu Tsui. My English is not very good. I hope you understand. I feel so nervous now. I've worked at home about 10 years as a sewing machine operator. I always work at home with no benefits, no UIC and CPP, no 4% vacation pay, low pay because we do piecework, and no minimum wage. I need to make long working hours because they send me the job but it's not stable. Sometimes they are busy and they push me to work hard. I need to work about 16 hours a day. I hope I can get some benefits. At the end of the year, they send me a T-4A form. We are not self-employed or sub-contractors; we're just home workers.

2040

Ms Mak: Maybe I could try to explain a little bit. Most of the home workers were accused by the employers of being subcontractors. That means she's self-employed, right? So at the end of the year they got T-4As. They pay the tax, but they get no benefits.

Ms Tsui: Our working conditions are very bad and they give me short notice. We cannot control the time because sometimes it's very busy and sometimes there's no job and we stay home a long time.

Ms Mak: On this point, sometimes the employers deliver the materials on Friday and want it by next Monday. That means they must work on the weekend and have long working hours. She mentioned short notice.

Ms Tsui: I have problems with the payment too, because they give me the payment every two weeks. They send me the material I need to work with and say, "I will send the paycheque for you next time." But sometimes they say, "I forgot," and then "next time" will be about one month to get paid. Sometimes the store closes. I didn't know. I didn't get paid about \$2,000 yet.

I don't know how to say it because I always work at home and I don't know which person to talk to. I just feel, myself, like a silent cow and always look after the children and work hard on the farm.

Ms Mak: A cow in China must work very hard on the farm. So when she said "silent," that means she has no complaint. She cannot say anything, but she must work hard and look after children too.

The next one is Cindy.

Ms Wong: Hi. I'm a home worker. I'm a legal immigrant and also a home worker. I worked really hard, but my employer also, because I don't know labour law and English, always paid me less than what I was supposed to get. I hope the government can protect our home workers. Also, retailers should take the responsibility to stop competitors abusing our home workers. Thank you.

Ms Mak: Maybe I can try to explain a little bit. Cindy Wong is a new immigrant from Hong Kong. She came here around two years ago and she is a home worker. She feels her employers always take advantage of her, because she cannot get what she's supposed to get. She thinks retailers should take the responsibility because they could control the contractors who are abusing the home workers.

Ms Cuthbertson: The agencies, organizations, clinics and groups that make up the coalition all advocate on be-

half of non-unionized workers, and we can't pretend to speak for them because they're not organized. Collectively, though, the coalition represents hundreds and hundreds of workers who are casualties of this recession, but also of the province's labour laws that no longer meet nor suit the changing workforce and workplace labour market.

We hear their stories, like tonight; like the domestic worker who worked for four years, seven days a week, 15 hours a day, and he was paid \$900; like the other domestic worker who was paid \$12 a month; like the woman who suffered relentless and ruthless sexual harassment but couldn't do anything about it because she needed her job; like the innumerable workers who can't complain about the lack of minimum employment standards in the workplace nor about the fact that their health and safety is being risked every day because of the fear of losing their jobs.

The solution is not to say, "Well, we should just unionize all these people." The solution is to say, "If these people want to unionize, let's make it so that they can unionize." The people we see are not in unions, not because they don't want to be in unions but because they can't get into unions.

The coalition supports the government's move to amend the laws. It also strongly urges the government to remember the changing workforce, the changing workplace, which the amendments are meant to address. To this end, and it's in the paper we distributed, tonight we want to address those amendments which go into helping workers organize themselves into unions when they want to be unionized.

Employers must be prohibited from disciplining or discharging employees during an organizing drive without the explicit permission of the OLRB. Too many times, organizing drives are cut down because workers are frightened of losing their jobs.

Because of the changing workplaces in the province today, unions should have access to employer property which is on someone else's property. Unions should also have access to employee lists. I know some employers have talked about privacy, but for every election there are lists of voters with their addresses and their names on every telephone pole across this province.

Further, the bargaining unit structure: The configuration of the bargaining unit has to be given a structure so that people can easily organize into bargaining units that suit the needs of the workplace. In our view, this should not be left up to the Ontario Labour Relations Board but rather should be directed through the legislation.

The government must contemplate broad-based bargaining, because it's only through broad-based bargaining that women—like the women who talked to you tonight; like domestic workers who are single workers in a household—can organize themselves into unions.

Further, the coalition believes that effective enforcement of minimum standards legislation has to happen in order to affect unionization. That also includes health and safety laws in this province.

We urge the government to create a task force on broad-based bargaining, and we also urge the government

to pass Labour Relations Act amendments according to the timetable.

As a result of economic restructuring and continental integration, the labour market has become polarized. The government must be committed to a labour market strategy that addresses this polarization, that addresses the good job-bad job phenomenon that is happening. We urge the government to pass amendments that address the realities. The government must not kowtow to business demands and further water down the amendments.

Thousands of people are not being heard, and they're not being heard because they do not have a chamber of commerce and they do not have a professional society and they don't have the organization nor the money to put billboards up on Bay Street. They are not being heard because they have no way to be heard, but their silence can't be mistaken for acquiescence or apathy. The people who are non-unionized in this province want labour law amendments and want them to help them. We ask that the people whom the coalition represents and advocates on behalf of be recognized and put in the equation.

Subject to any questions, that's our submission.

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The Chair: I'm sure there are questions. Mr Offer. We're going to make sure these people get their full half-hour.

Mr Offer: Thank you for your presentation. There are two areas I want to explore with you. The first deals specifically with the issue of the home worker. As you have rightly said, it's not an issue as to whether unionization is better or not; it's an issue as to whether those individuals, as home workers, have a legitimate and real ability to make that choice. That's clear.

My question to you is, in the provisions of Bill 40, it seems the only way in which that type of ability to make a choice will be there is if there is something of a sectoral nature, and that is not in Bill 40. I know you're calling for the task force to deal with that issue. At this point in time, apart from your suggestion on the task force for sectoral bargaining, should we be looking in a real way at the Employment Standards Act?

We've got to deal with the issues you've brought forward. There is no way anybody should be working in whatever setting in the conditions which you have exemplified today. If it's through the Employment Standards Act, then so be it, and let's deal with that.

Ms Cuthbertson: The coalition has spoken on many occasions with the Ministry of Labour with respect to the Employment Standards Act. It's our view that the Employment Standards Act needs to be amended in some critical areas, particularly the exclusions from the act.

But importantly, in the Employment Standards Act there's some great stuff to enforce it. If there's the political will to enforce that act, the teeth are there. We have asked the Ministry of Labour on several occasions to enforce its act, to kick up the non-reprisal sections that exist, to institute prosecutions against employers, to enable people—again, when you're dealing with non-unionized workers, their greatest fear, especially today, is losing their job.

If a client comes into Parkdale, for instance, and says, "I want to assert my rights," I have to say, "Well, these are your rights but I should tell you that if you enforce them, you might lose your job, and it will take me six months to a year to get you any compensation, and I'm not going to be able to get your job back for you." So, yes, the coalition urges the government to effectively enforce that act, because you can, given what already exists there.

Mrs Fawcett: First of all, I want to thank you for coming and really commend you for telling us your story. You have done exceptionally well. I know you were probably very nervous, but possibly not any more nervous than a lot of us have been at various times, and I just want to commend you.

I certainly do sympathize with the exploitation that is going on. While I realize that you are asking for Bill 40 to be enacted as soon as possible, my fear is that is not going to produce the changes you think it will. I guess I'm more inclined to agree with my colleague that maybe we should look at several fronts to make sure you get what you deserve. I just really wanted to say that, and to thank you very much for coming.

Mr Harnick: Coming at this from the perspective of the International Ladies' Garment Workers' Union and the history that it has in developing labour relations over the years, this is another major and very legitimate battle that primarily this union has taken on. With their history, I quite suspect they will develop better laws in time to combat some of the difficulties of home workers.

But I'm somewhat distressed when I read your brief, and I'm looking at the paragraph under "Conclusion," where it states:

"While some of the government's proposals will facilitate organizing and collective bargaining, we believe that it is extremely unlikely that even if all of the proposals are implemented that women and visible minority workers will benefit to any significant extent. In fact, none of these proposals will do much to protect home workers from unscrupulous employers, let alone help them unionize."

From reading that, I get the impression that there's an assumption that the number of non-union workers is really not going to change in terms of numbers, and it seems to me, carrying on from what Steve was dealing with, that really the prime focus has to be protection of non-unionized employees who are home workers; in other words, the specific development of legislation dealing with home workers, the ability of the Employment Standards Act to specifically recognize that class of workers. I wonder if you could provide me with some comments about that.

Ms Ladd: As Sheila has explained, I think the Employment Standards Act definitely needs to be enforced. I think that in terms of what we stated in the brief, there are many forms of precarious employment that exist. Especially at this time we've seen the issue of part-time workers, and again, as we've seen, the changes in the workforce. Women and immigrant workers and visible minorities are forced into those types of employment, as well as domestic work, as well as home work. Issues such as broader-based

bargaining and protection during organizing drives from threats from employers are the things that need to be enforced, which I think Bill 40 addresses in some ways.

If I could give an example of a recent organizing drive, we were talking to some home workers in terms of joining the association we've formed through the coalition. Some of the workers, who were Taiwanese, had been told by their employer that we were only trying to organize the Taiwanese workers. So they were trying to divide the people up, and they were being threatened at home by phone calls saying: "Are you trying to join a union? We'll take your jobs away."

When you've got women in the home by themselves getting a call, as you can imagine, this is very scary, and that further enforces the women not even having the perception that they could join some organization that would represent their interests, that this would be wrong and that even just talking to someone would lose their jobs.

That's why we feel Bill 40 is important, but it still needs to be taken further and there are many other changes, like the task force, like revamping the ESA and enforcing the legislation there. I don't know if that answered your question.

Mr Harnick: Why do you suppose that the act, if you can be specific and help us out, will not facilitate in any significant degree—I think that's what you're saying under your "Conclusion" heading—those home workers who wish to really join a union and become unionized?

Ms Cuthbertson: Because of the particular bargaining unit configurations which are used by the labour relations board, it would be very difficult, for instance, for a domestic worker, who can now organize into a union, to become a member of a union and strike an employer effectively. After all, there's just one and you need two in order to organize into a union. With the home workers it's the same situation.

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It would be very hard to say what the labour relations board would do in terms of bargaining units. If you haven't got bargaining unit strength you haven't got an effective union, which is the big problem. That's our concern, which is why we're really urging the government to look at broad-based bargaining. This is the way you scoop up these workers.

Just to go along with your point, we think that non-unionized workers will stay at the same rate. We don't think it has to be that way. I don't think it would be so terrible to say that the coalition endorses and condones unionization among employees. We think it's a good thing for employees to organize into unions.

We want an amendment package which will facilitate that, not perhaps at this point for home workers and domestic workers because, unless you have a more sexual approach, it's going to be difficult. But in terms of other non-unionized workers, you've got to give some teeth to these amendments so that those folks can organize if that's what they want to do.

Mr Huget: Thank you very much for your presentation. This has been an interesting experience for me re-

garding the retail industry. On the introduction page of your brief here you use an example of someone who had to work in the basement because of a hearing disability and was paid \$1 an hour. Yet Dylex was here earlier and suggested that the relationship in the retail sector, particularly around garment workers in their operation, was one big, happy family. We're getting two very different opinions on the actual conditions here.

I personally am outraged that today someone has to work in a basement anywhere for \$1 an hour. I think that's a sad reflection on where we are as a society. I think there's a heck of a lot of work that's got to be done in a number of areas to correct that situation. It's certainly nothing that anyone in this room would be proud of and, I'm sure, nothing that anyone condones.

What I need to know from you is, first of all: How many home workers are there, in your estimation, in the province of Ontario now? How many do you expect to see? How many of them do you think, or know, are in the same condition and working, in the same conditions as that person with a hearing disability, in a basement for a buck an hour?

Ms Ladd: I think Barbara Cameron, who was the researcher who researched the original documents—in terms of what we've seen in the industry and in terms of what we've generally seen in the Metro Toronto area, our estimates are 2,000 to 3,000 home workers. I would say it's a reasonable assumption to say that. I think home working will increase. I think you just have to look into any newspaper. At the back, in the classifieds, you see many different ads asking, "Would you like to work at home?"

If you phone up those numbers and if you follow those leads you'll find lots of women do phone those numbers. Especially the women we've talked to have phoned those numbers and have been exploited by the people who do place those ads, because then they end up getting about \$1 an hour. Or they get ridiculously low piece rates to either sew garments—or now it's proliferating into many different areas of work like assembling products at home, welding, electrical engineering, soldering, many different types of home work.

I think it will definitely increase. I don't know what estimates there are in Ontario; do you? No?

Ms Mak: I think nobody knows the exact numbers, because the home workers are really afraid to talk to us. I did interviewing last year and I found 30 women. It's really hard to find them. I really hope the government can do some more detailed research to find out the facts. What we are finding is that women are getting \$1 an hour and working in the basement in horrible working conditions.

Mr Huget: Can you tell me what happens when someone decides to take some action, decides to organize or join others or try and correct what is an obvious total injustice? Could you tell me some of the mechanics around the intimidation of that person? Are we talking about threats here? Are we talking about somebody saying—what? You allude to it in your presentation, but I'd like to know, at least one—if you have it—example of how you're threatened when you try and improve your lot.

Ms Mak: I think the better thing is to let the home workers talk about what they are feeling, of what they are afraid. Is it okay?

Mr Huget: Yes, please.

Ms Tsui: Okay. I try to explain. I have some friends, they are home workers too, but they don't know what is a union. They are always scared to talk to somebody. They just talk to the friend. Sometimes they give me a call, they don't like the employer. Because everything, if they don't like it, they don't know how to say to a rich person, because most of the home workers, their English is very bad. And always they worry about, if they talk too much there will be no job to send to you.

Mr Huget: Somebody will take away your \$1 an hour.

Ms Tsui: Yes.

Mr Huget: Are they afraid?

Ms Tsui: Oh, yes. So they always work; they think better than none. So they try to keep working.

The Chair: I want to thank you, Deena Ladd, Teresa Mak, Sheila Cuthbertson, Cindy Wong and Kitty Pik-Yu Tsui, for coming here on behalf of the Coalition for Fair Wages and Working Conditions for Home Workers.

In thanking you, I feel compelled to indicate that means thanking the International Ladies' Garment Workers' Union, Workers' Information and Action Centre of Toronto, Chinese Workers' Association, Parkdale Community Legal Services, which is a long-standing institution which continues to provide leadership in areas where it's needed, Ontario Coalition of Visible Minority Women, Ontario Coalition for Better Child Care, the Trinity-Spadina Riding Association, Ecumenical Coalition for Social Justice, National Action Committee on the Status of Women, Labour Council of Metropolitan Toronto and York Region, School Sisters of Notre Dame and the Workers' Educational Association, because those are the organizations that make up the coalition.

I should tell you that a Hansard transcript of your presentation is available to you, as well as a copy of the videotape recording. Call your MPP's office, and if he or she won't or doesn't know how to get it, tell him or her to call my office. Along with any of the other presentations, of course, a copy of the videotape may prove useful to you as a document of your attendance here and perhaps a historical record of your participation.

So I want to thank you very kindly for coming here. You've made an important contribution to this very important process. I trust that you, along with all the other people who participated in and will participate in these hearings, won't stop at one half-hour presentation but that

you'll continue to knock on MPPs' doors and sit in their offices wanting to talk to them about things that concern you. I say that to you and every other organization, group and individual that's been here. So thank you, people. God bless.

Mr Ferguson: I really view this as a problem-solving exercise. Although we are here to listen to concerns specifically about Bill 40, this is a problem that obviously has been presented to all members of the committee that has much broader implications. They are desperately looking for a solution. I hope members of the committee would spend time, perhaps at the end of the hearings, about what we could recommend to the ministry to resolve some of the specific concerns we heard tonight. I hope these individuals who took time to appear wouldn't leave here and think: "Well, that's it. We've demonstrated and put forth the problem without any real or practical solutions." Let's face it: This hasn't exactly been capitalism's finest hour.

The Chair: You're right, Mr Ferguson. The committee can make recommendations and individuals can make recommendations. I trust a whole lot of people are expecting to see a whole lot of amendments to the bill from all caucuses at the committee.

Mr Offer: I listened intently to the last comment by Mr Ferguson. I wholeheartedly agree that this is certainly an area we must address—and I'm talking about the Employment Standards Act. Maybe it would be important at this time if we could request from the Ministry of Labour where it is with respect to this particular issue, because we're aware from earlier submissions that this issue was made plain to the ministry in December 1991. I think we should use this committee and make a formal request of the minister or the Ministry of Labour to provide an update as to what they have done with respect to these very valid concerns we have heard this evening.

The Chair: Okay. That request is noted and I'm confident will be conveyed promptly to the bureaucrats et al at the Ministry of Labour whose job it is to respond to comments like that.

I want to thank the committee members for their cooperation, the staff, of course, the translation people who have kept up with sometimes speedy dialogue and simultaneous dialogue, the legislative broadcast service, the Hansard people, the research people, the office of the Clerk and all those people who were here at Queen's Park watching this happen this morning, this afternoon, this evening and those who're going to come in the two days to come in Toronto. Thank you, people.

We're adjourned until tomorrow morning, 10 am.

The committee adjourned at 2113.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

- *Chair / Président: Kormos, Peter (Welland-Thorold ND)
- *Vice-Chair / Vice-Président: Huget, Bob (Sarnia ND)
Conway, Sean G. (Renfrew North/-Nord L)
Dadamo, George (Windsor-Sandwich ND)
Jordan, Leo (Lanark-Renfrew PC)
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Turnbull, David (York Mills PC)
Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgianne ND)
Wood, Len (Cochrane North/-Nord ND)

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- *Cunningham, Dianne (London North/-Nord PC) for Mr Jordan
- *Eddy, Ron (Brant-Haldimand L) for Mr McGuinty
- *Fawcett, Joan M. (Northumberland L) for Mr Conway
- *Ferguson, Will, (Kitchener ND) for Mr Wood
- *Fletcher, Derek (Guelph ND) for Mr Dadamo
- *Harnick, Charles (Willowdale PC) for Mr Turnbull
- *Jackson, Cameron (Burlington South/-Sud PC) for Mr Turnbull
- *Ward, Brad (Brantford ND) for Mr Waters

*In attendance / présents

Also taking part / Autres participants et participantes:

Kovacs, Jerry, counsel, legal services branch, Ministry of Labour

Clerk pro tem / Greffier par intérim: Decker, Todd

Staff / Personnel:

Anderson, Anne, research officer, Legislative Research Service
Fenson, Avrum, research officer, Legislative Research Service

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Legislative Assembly of Ontario

Second session, 35th Parliament

Official Report of Debates (Hansard)

Monday 10 August 1992

Standing committee on resources development

Labour Relations and
Employment Statute Law
Amendment Act, 1992



Assemblée législative de l'Ontario

Deuxième session, 35^e législature

Journal des débats (Hansard)

Lundi 10 août 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant des lois
en ce qui a trait aux relations
de travail et à l'emploi

Chair: Peter Kormos
Clerk: Harold Brown

Président : Peter Kormos
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 10 August 1992

The committee met at 1330 in room 151.

LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

PATRICK MELADY

The Chair (Mr Peter Kormos): It's 1:30 and first we have the Centre for Individual Rights. Those are the people who were scheduled to be here. We've got half an hour. Please try to save at least the last 15 minutes for exchanges and dialogue and discussion. Go ahead, sir, tell us who you are, what your status is, if any, with the group which is scheduled this half-hour, and tell us what you will.

Mr Patrick Melady: My name is Patrick Melady and I'm an executive director of the Centre for Individual Rights. I'm here to speak on my own behalf. The centre doesn't have any difficulty with what I have to say. I'm a self-employed management consultant and I work in the field of labour relations.

I'm here today because I have serious and grave concerns for the future of my province. I believe that Bill 40 and its preceding incarnations—the Burkett committee report, the leaked cabinet documents and the discussion paper—will continue to seriously constrict economic activity in the short term, have a negative effect on growth in the medium term and damage the prospects for economic expansion in the long term.

Investment climate is a fragile aspect of any economy, so much so that perception is the reality. Investment decisions are made quietly, and Ontario will gradually disappear as an alternative on the investment priority lists. Bill 40 will be one cause of many in this process. Ontarians will never hear an announcement from a major international enterprise that it has decided to not consider Ontario.

Industrial peace, harmonious relations, economic development and economic expansion cannot be ordered by the Legislature of Ontario. If you believe that you can command, by legislation, industrial peace, harmonious relations and economic development and expansion, then I encourage you to do so, and you should have done so long ago without fear of political reprisal.

Since May of 1991 I, with the assistance of my colleagues at the Centre for Individual Rights and Melady and Associates, have made presentations regarding the changes in the Labour Relations Act in 10 communities in Ontario, Brantford, Burlington, Cambridge, Guelph, Kitchener, London, Mississauga, Waterloo, Windsor and Woodstock.

We've spoken to more than 450 employers, to more than 650 individuals, and this represents approximately in excess of 35,000 jobs. The purpose of these presentations has been to educate those in attendance on the labour relations reforms put forward by organized labour and to develop and present an employer-employee agenda for labour relations reform. There was widespread support for the agenda.

I've made presentations of some of my concerns at the consultations on the Labour Relations Act in Windsor, and in writing. I've written many letters to both the Minister of Labour and the Premier. There have been numerous acknowledgements from them, but no answers to my inquiries or responses to my comments.

I have a concern for the need for labour relations reform. The government explanation for the need to change is that there has not been a review of the labour legislation for 15 years. The passage of time is not an explanation; it is an excuse deployed in the event there is no demonstrated need.

I have consistently voiced my concern for the nature and direction of the changes to the Labour Relations Act. I have consistently put forward my concern for individual rights, freedom of choice, accountability and responsibility of all parties in the employment relationship. I believe that the changes put forward in Bill 40 damage and infringe upon individual rights and freedom of choice while ignoring the propriety of accountability and responsibility of all parties to an employment relationship. I believe that individual rights and freedom of choice are being sacrificed in exchange for past and future political support. The politicizing of labour relations will lead to instability in labour relations practice, legislation and regulation. Private and institutional greed are only served by politicizing labour relations. There is no public good served in the process leading to Bill 40 or by the majority of the provisions in Bill 40.

The consultation process is and was flawed. During the consultation, submissions were struck from the record by the minister. You'll have to ask the minister why he did that. I don't know. I haven't got a rational explanation for it. The slow response from the Premier and the minister, the discrepancy between the expectations and the reality of the much-vaunted consultation process and the arbitrary and unfair distribution of time to consider and evaluate the government's Bill 40 all served to undermine confidence in the preparedness of the government to listen and respond to the concerns of the public. The process has been unfair and arbitrary and the government has been intractable and unresponsive to the valid criticisms and balanced input from the public.

During the consultation processes there were a number of presentations made by employees. I want to bring those forward today in part. The first one was from a group of employees at Northfield Metal Products, and the full text

of the presentation is presented in the brief that you have. I will read some excerpts from it.

"We are employees of Northfield Metal Products and members of the employee communication committee. We also represent some of the 65% of employees in the province who are not unionized.

"In 1989 and 1990 we lived through the effects of the Labour Relations Act. We do not want to have to face this again. We do not believe that other employees should have to face the same barriers to decertification and denial of freedom of association that we had to overcome.

"We, as an employee group, feel that changes to the Labour Relations Act are way off base....There aren't many" provisions "in the act to support non-union employees who do not wish to be unionized.

"A representation vote was held in November 1988. The union won on a small margin. As an employee group we filed an objection claiming that employees of Vietnamese, Laotian and Cambodian descent had been misled by the union during the organizing and election campaigns.

"The labour board said that it didn't matter if they knew what they had voted for or why they had voted: A vote was a vote and therefore it counted. We had some of these employees at the hearings to testify as to what they were told, but the labour board was not interested.

"We feel that in today's workforce there are a large percentage of immigrant employees. The law protects them from employer discrimination; it does not protect them from being misled by union organizers."

At certification "it is our recommendation to improve communications:

"That the trade union and the employer hold an open forum for all employees, so that we as employees can hear both sides and make an informed decision after hearing all the pros and cons of working within a trade union. At the present time we are only allowed to hear the trade union side.

"Improved access to first-contract arbitration: First-contract arbitration should only be used as a last resort....

"Instead of being honest, the union" in our case "went ahead and asked for first-contract arbitration, then used this application to block a decertification drive that they knew was coming. As an employee group, we couldn't believe that the labour board set aside our termination application in order to go on with the first-contract arbitration hearings. We had 80% of the employees sign for decertification....

"It was only then, after we took the situation into our own hands and suffered financially, that the union agreed to set aside their arbitration request and let us have a vote for decertification.

"Our recommendations are:

"1. It should be made easier for employees to go in front of the labour relations board without representation from a trade union or a lawyer. The board should not take the attitude that all employees need or want a trade union. They should not overlook the employees simply because they don't have the legal knowhow to twist the labour laws to work for them. Trade unions should not be allowed to block any timely decertification drive....

"3. Before any union applies for first-contract arbitration it must be mandated by employees in the bargaining unit by secret ballot.

"The rights of employees should always outweigh those of a trade union."

There are more issues which they addressed.

"1. The signing of union cards should do not more than allow a vote, the same as an employee group signing a petition for decertification....

"5. The rights of an employee should always outweigh those of a trade union. Employees who are forced to join a trade union that they don't want should be allowed to decide for themselves whether or not they want to cross picket lines. We would prefer to see the law relating to this remain unchanged.

"6. Initiation fees: The initiation fees should remain and be raised to the equivalent of one month's union dues....A copy of the union's constitution should also be given to the employee before signing. This should be mandatory to allow for informed decision-making....

"8. The same rules and percentages that apply to union certification should also apply to decertification."

A second presentation was made by a group of employees, and this one was made in Kitchener on February 14. It was made by Cambridge Reporter employees. The full text is included in the brief for you to read. This particular presentation was struck from the record by the Minister of Labour. When you finish reading the presentation you can make your own conclusions as to why the minister struck from the record the words and thoughts of working people in Ontario. I want now to read just very briefly from it.

1340

On October 17, 1991, the union "asked the employees for a strike mandate, by conducting a strike vote.

"Some employees were not aware of the purpose of the vote. Some employees who were not present were allowed to vote by phone in favour of the strike mandate.

"Others who were not present, who had stated by proxy their opposition to a strike, were denied the opportunity to vote....43 votes were counted; 38 people were present. The vote was not well publicized, the vote was not secret and the vote was not fair....

"The replacement worker restrictions would allow the union the authority to declare legitimate work unlawful. This is not responsible government. To allow a union to contaminate work by making self-serving declarations is wrong. The observation that 'the use of replacement workers during a labour dispute can lead to bitter and violent confrontations' is not a statement of the whole truth. In most cases"—if not all—"it is not replacement workers who engage in 'bitter and violent confrontation,' but rather outsiders or those who are on strike.

"The employer, the union, and their respective supporters have to be controlled in their actions. The use of replacement workers is not the main cause of bitterness and violence. Those subjected to the violence usually are workers who have and want to do a job for the pay they normally receive—for example, managers, members of other bargaining units, outside suppliers of goods and services, and non-striking employees. These are not replacement workers;

they are workers who have their regular jobs to do. Why is the government even considering making honest, regular work illegal? The proposal to restrict workers from performing their regular duties and to further restrict the employment opportunity of others is to prohibit legitimate and appropriate behaviour. This proposal is a reward for breaking the law. The proposal is nothing more than ransom to economic terrorists."

Those are the words of a group of employees, not mine.

I now want to deal with Bill 40 and the character of it. The Minister of Labour, in his statement introducing the legislation to the Legislature on June 4, stated, "Our goal is to promote more dialogue, discussion and problem-solving between workers and employers." I have little doubt that there's a need to improve employee-employer relationships, to promote more dialogue, discussion and problem-solving between employees and employers. I have serious doubts that the legislation will facilitate such an objective. Bill 40 does not address employer-employee relations; Bill 40 addresses union-management relations. Bill 40 is more concerned with unions than with employer-employee relationships. The provisions of Bill 40 undermine employee self-determination, freedom of choice and democratic principles in the workplace. Bill 40 infringes on individual rights for the benefit of unions.

Bill 40 has to be examined for what it accomplishes and then exposed for what it is. These are the accomplishments of Bill 40: Bill 40 seeks to reduce competition for unions; expand the market for unions; ease access to the existing and expanded markets; assure monopolistic control of work normally performed by a bargaining unit; restrict communication to the captive market; reduce and eliminate risk in both new and proven market segments; monitor and evaluate the outcomes of the negotiations process, and increase labour board and arbitrator involvement in evaluating labour relations issues.

Bill 40 is a high-handed, economically motivated political effort by union bosses to achieve monopoly or near-monopoly in labour relations. This has the resonance of a business plan, if you are an 1890's robber baron seeking a monopoly in an industry or a 1990's union boss seeking to secure your pension through the flow of union dues.

Bill 40 does not deal with the needs of employees or employment relationships. Industrial peace and harmonious relations cannot be ordered by the Legislature of Ontario. Bill 40 intends to evaluate the relationship. The move from monitoring the process to evaluating the outcome in labour relations is passing legislative power and authority from elected officials to appointed functionaries. To whom are the labour relations board officials responsible?

I want to deal with some of the specific provisions.

The purposes: Bill 40 seeks to define the nature of relations between an employer and a union, to determine the direction of this defined relationship and finally to evaluate the outcome.

The purpose clause provides the Ontario Labour Relations Board and arbitrators with their marching orders in evaluating outcomes of the processes in labour relations: certification, negotiations and administration of collective agreements.

Historically, in the event of a tie in a vote, the decision would favour the employee-employer interest. The purpose clause directs that the union cause be favoured. The purpose clause builds a systemic bias which favours legislated union rights over individual rights and should not be accepted.

The combining of bargaining units: Bill 40 provides for the combination of bargaining units—full-time and part-time and by geographic location. This is a denial of local autonomy and diminishes employee control over the outcomes and the decisions which directly affect those terms and conditions of employment that the union is supposed to protect. Bill 40 undermines employee participation in decision-making and problem-solving, clearly not consistent with the stated goal of the government.

Access to third-party property: The Bill 40 intrusion on private property for economic purposes is an assault on individual right to security of person and property. The aggressive and persistent union organizer now is allowed to carry on in a fashion similar to the foot-in-the-door sales technique, without a cooling-off period, an opportunity to reconsider or cost of membership.

The negotiation of collective agreements and mandatory provisions, such as first-contract arbitration, reinstatement following a strike, just-cause provisions and adjustment agreements, is the next area I want to deal with. My summary is that each of these and the other mandatory provisions reduces risk and therefore assures a level of benefit for unions in the negotiation of collective agreements. From an individual perspective, one has to ask, why are the rights of freedom of choice and association infringed upon in order to reduce risk for unions? It's not appropriate.

The arbitration provisions: Under Bill 40, an arbitrator will be empowered to determine what the issue is, investigate alternative solutions through mediative efforts and finally, if, not unlike the parties, he's unable to come to an agreed solution, make a decision.

The Bill 40 solution is to absolve parties from being responsible for clarity and to give the task to the arbitrator. This is a denial of effective problem-solving. To take dispute resolution from the parties is not good problem-solving technique. Bill 40 must require that the parties solve their problems, not pass them on.

Strike conduct and replacement workers: This is an issue of denial of individual right to work. The replacement worker restrictions will be effective only in the event a union gets a strike vote of 60% or more. Any strike vote by legislation today is supposed to be by a method that an individual's choice cannot be known. There must be ample notice of the vote, and all employees, whether members of the union or not, are entitled to vote.

If you read the Reporter employee submission to the consultation process, you will realize that these conditions are not squarely met. A threshold of 75% for invoking replacement worker legislation will significantly reduce the probability of union gerrymandering and will bring Bill 40 in line with the German model.

Bill 40 must be amended to require that a supervised vote take place within 48 hours of the commencement of a strike or after and separate from a ratification vote. Bill 40

must provide for employer communication to the workforce. Bill 40 must be amended to allow employees to decide, without fear of reprisal, to work or not. These are not replacement workers; they are regular workers. It is their jobs they seek to attend to.

The sale of business and contract tendering: Bill 40 refers to these initiatives as preservation of bargaining rights for unions. If the government's concern is for the poor, the poorly educated, immigrants and women in the workplace and if these are intended to protect them, then the government should address those issues, not the workplace. Address the issues of the poor, address the issues of the poorly educated, address the issues of women and address the issues of the immigrant, but not the workplace.

The last aspect I want to deal with is an agenda for change in labour relations. It is our recommendation that the preamble to the Labour Relations Act read, "Where collective bargaining has been established by a free vote of the affected employees, it is in the public interest that harmonious relations and industrial peace be maintained," and that a purpose clause be introduced to augment the preamble which includes the following elements: "to encourage cooperative approaches between employers and employees in developing and improving workforce skills and workplace productivity; to provide for effective, fair and expeditious methods of dispute resolution; and to protect individual freedom of choice to work and representation and security of property."

Certification should be by a free vote in an open campaign. The union should be required to provide employees with a copy of the constitution.

1350

Union accountability: We need to create a tax on union dues collected in the province which will finance the Ontario Labour Relations Board and the activities of the Ministry of Labour which directly subsidize organized labour.

Individual rights: There should be right-to-work legislation to assure the individual that the decision to work when work is available is upheld. We should allow for the redirection of union dues to a charity or recognized church by the simple completion of a form.

Collective agreements should be ratified by secret ballot.

Strike conditions, preconditions, conduct and guidelines: We believe that if a strike vote is necessary it must be by secret ballot and held separate from and after any ratification vote, making provision for a cooling-off period; second, that the parties file, as a precondition to a strike or lockout, a strike-lockout code of conduct. This code will set out the number of pickets at each location and will provide for a set of mutually agreeable conditions under which the parties will protect the public safety and interest while engaging in their dispute.

In conclusion, evaluating and directing the outcome of labour relations processes is territory fraught with danger. While it may be attractive to certain political parties today, these same political parties may not have the same view at the conclusion of a future election. The workplace in Ontario must not be exposed to the vagaries of the electoral process. Industrial peace, harmonious relations, economic development and economic expansion cannot be ordered by

the Legislature of Ontario. There is no reciprocal benefit large enough to compensate for the reduction of individual rights and the diminution of self-determination in the workplace.

I thank you for listening today. I trust that you will prove your good intentions by bringing forward unanimous recommendations to uphold individual rights of freedom of choice in Bill 40.

The Chair: Thank you, sir. Mr Offer, Ms Fawcett, Mr Eddy; two minutes.

Mr Steven Offer (Mississauga North): Thank you for your presentation, Mr Melady.

In the time allowed, I wonder if you could share with the committee some of your thoughts on the secret ballot process. You have alluded to it on more than one occasion in your presentation, but you will know that one of the purposes of this bill is stated to be to facilitate and to streamline organization. You will also know that there have been some suggestions that this could be met if a secret ballot vote were instituted, which is different from what is called for in the legislation. What I'm asking for is your thoughts on a secret ballot where a worker would be given information as to what unionization may mean for him or her and then, after full information, be able to cast his or her choice either for or against, in a secret ballot to be held, I would suggest, at the employer's premises. I'm wondering if you might want to share your thoughts about that.

Mr Melady: Certification can certainly be expedited by allowing for a secret ballot vote or mandating a secret ballot vote. A lot of the delay that takes place today in labour relations and in certification is caused by the dispute as to whether or not a vote is going to be ordered or whether or not certification will be forthcoming. I would suggest that if the union makes an application with 50% or more of the cards signed, the labour board order a vote, and within a time frame. You can accomplish a secret ballot vote without extensive delays as long as the parties, the union and the management, acknowledge and realize that the secret ballot vote is going to be the outcome of a certification application; not automatic certification or the possibility of no certification but a secret ballot vote.

Mr Cameron Jackson (Burlington South): A question of clarification on your brief, Patrick. The quote was "rancid economic terrorism," and that was a unionized worker. Where was the example? What city was that?

Mr Melady: That's from Cambridge. It was "ransom for economic terrorism." Those particular employees had been exposed to crossing a picket line for about four months.

Mr Jackson: Yes, I was here for the brief.

My question then is with respect to page 23, individual rights, point 6. Are you familiar with legislation in Manitoba that offers a very narrow grouping of members of certain religious beliefs to have exemption from union dues? Is that the point you're making here; very simply, that for very strong religious convictions the inability to be a member of a union shouldn't be held against an individual?

Mr Melady: Yes.

Mr Jackson: That somehow that be reflected in the bill.

Mr Melady: The rationale behind the recommendation is that if you examine labour relations board statistics, you'll find that applications for exemption on religious grounds are, for all intents and purposes, acknowledged in somewhat less than 33% of the cases. In point of fact, what we have here is that 60% of the employees or individuals who seek exemption are denied that. All we're saying is, make it simple. Allow them to make their declaration of religious affiliation and not exempt them from the payment of dues but redirect the dues.

Ms Sharon Murdock (Sudbury): Thank you again, Mr Melady. Rather than ask you a question, as we have only two minutes, I just want to go to page 3 of your presentation and the paragraph in relation to the consultation process, where a submission was struck from the record.

As you are well aware, that occurred once in Kitchener. Given that during that consultation period there were so many people who wanted to make presentations, we added days on; when Tara footwear was called it wasn't Tara footwear that came forward at all. The minister stated it was an unfair and improper procedure to have someone who was not scheduled to appear come on misrepresenting themselves. As a consequence, that and only that submission was struck from the record that was kept. However, written submissions were accepted; in point of fact, the very group you're referring to will be appearing here tomorrow.

Mr Melady: I'm pleased to hear there was only one struck from the record. I'm disappointed to hear there were any struck from the record. I fail to comprehend—

Ms Murdock: With good reason.

Mr Melady:—how you can have consultation and strike information from the record. You have a presentation made to you by a group of people who are citizens in the province of Ontario seeking to make their position known and you strike it from the record. That's inappropriate in my view, but—

Ms Murdock: They did not come through the regular process, Mr Melady.

Mr Melady:—you're certainly entitled to your opinion on it.

The Chair: Thank you. I have no objection whatsoever to two, three or four people talking at once, but the translation staff and the people in Hansard who have to transcribe this have a great deal of difficulty with that.

Thank you, sir. I appreciate your taking the time to come here and share your views with us. The input of you and others is a valuable part of this process. We thank you.

Mr Melady: I appreciate the opportunity and if you want me back, I'd be pleased to return.

HUDSON'S BAY CO

The Chair: The next participant is the Hudson's Bay Co. Please, sir, be seated in front of a microphone. I want to remind people that there's coffee and other beverages here at the side, so people here as observers can make themselves comfortable.

Sir, you're here on behalf of the Hudson's Bay Co. Please tell us your name and your status with the company. Try to save at least 15 minutes of your half-hour for exchanges and dialogue. That's obviously a very valuable part of the process.

Mr David Crisp: My name is David Crisp. I'm the vice-president of human resources for Hudson's Bay Co. I have a short statement, about 10 minutes in length, which I've prepared in order to take you through this. It doesn't repeat but it backs up and clarifies the handout which I believe has been circulated.

Perhaps I should open by saying that the last time I was in attendance at one of these committee hearings was about 12 years ago. I attended in the room down the hall on behalf of the Ontario Secondary School Teachers' Federation when I was president of the teachers' union in North York and we were embroiled in somewhat the same issues as we are today.

There are four reasons for making the presentation today, and I'll enumerate them.

1. Hudson's Bay is one of the biggest employers in Ontario, outside government, with over 20,000 jobs.

2. We're currently well into a program of progressive employee relations: flexibility that empowers employees. We've done things like doubling our expenditures on training, for example, in the last two and a half years alone, something that none of our unions has ever asked for but which we have undertaken on our own because we see labour relations and employee relations moving into a new context for the future and we want to be there first.

3. I was hired to build those better employee relations, along with my credentials including that previous experience as leader of a union, in hopes that it would enable me to see and to maintain a focus for the company on progressive labour relations, so that I could understand both sides of the issues. I come to you as a collective bargainer of about 20 years' experience, having had considerable time in that period on both sides of the bargaining table.

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4. I believe Bill 40 goes in exactly the wrong direction for labour relations, backward not forward, hurting and not helping better relations for all parties. I'm extremely concerned about that and I believe I would have similar concerns were I still representing the other side.

Let me start by asking: "Was the change necessary? Was any change necessary?" I think the answer is probably, "Yes, eventually." In the middle of a recession is perhaps not the best time.

The next question is, "Are these the most helpful and necessary changes?" I think not. Together they mean business uncertainty for at least another five years. Business is unanimous that these changes will hurt. No one is saying on the business side they will help. I'm not going to play the game of guessing how bad or how many jobs or how many millions of dollars of investment may not be spent or may flee. That's guesswork essentially, best left to researchers, but no one on this side of the fence is saying that it will attract investment. Here are two of what I believe are the key reasons why:

First of all, North America in general is racing to catch up with employee involvement processes—participation, cooperation, mutual problem-solving—things that this bill states its intent is to address but which I think it addresses only in reverse. I used to believe, as the government now seems to, that management would only listen to unions if the unions had a bigger stick. This is somewhat like the United States arming perceived weaker nations to promote peace. We know the outcome of that has been continuous war around the world. We need real participation mechanisms, particularly in business where war has no place, where people get to have a say through freedom of speech and the ballot box, not through bigger armies with army commanders dictating the moves independently of the people. That's the participation argument.

Second, we must strive towards less outside—in this case, government—intervention and overmanagement, not more. People should solve problems best face to face when facts count more than legal rules of diplomacy. We don't need more legislation with more arbitrators with more powers, but less. To create more of these is even inconsistent with giving unions more power. If we believe that they should have more power, why do we need more outside intervention at the same time? Let's let people, information, free speech, free choice and issues along those lines create the participation. Don't drive a bureaucratic wedge between face-to-face problem-solving.

The proposed legislation is at least as disappointing for its glaring omissions as for the irritating details of big stickism and big brotherism that it does contain. The real power in collective bargaining does not come from restricting replacement workers, which reduces free choice, nor from eliminating petitions and employers' free speech, nor from giving the labour board not only a mandate for automatic first-contract arbitration, which cuts off all bargaining at those agreements, but an even more dangerous power, which has been very little discussed so far: that it would be able to change any term in any agreement if it finds bad-faith bargaining.

What will the word "agreement" mean if it can now be modified and dictated by outsiders, and how can the labour board not accept to dictate terms when it is required to find and remedy bad-faith bargaining? "Bad faith" will be defined by a completely one-sided purpose clause that says you haven't bargained unless the final result is to improve terms and conditions of employment. We've seen, for instance, that when employers want to merge job hierarchies in order to justify and promote cross-training between job classifications, it creates enormous resistance.

How can the labour board not bend to that kind of pressure and agree that somehow eliminating job hierarchies is not improving terms and conditions of employment? And if that's the case, how can we make progress in those training areas? That's a single example of a great many issues that will fall by the wayside if we do not have greater balance in this legislation.

Hugely widened powers of arbitrators will even drag the Canadian Charter of Rights and Freedoms into private collective agreements between private parties when it was properly designed to look at laws and government process

only. Settlements under this condition will either take years or be so subject to the whims of individual arbitrators as to be completely unpredictable. We can't even begin to guess what all of this process and new power for these arbitrators and the labour board will produce. Will already powerful unions use the extra power to wield an even bigger stick and small unions use legal processes to slow business, small business especially, to a standstill? We can't guess, and that's why uncertainty will continue.

The claim that existing legislation left unions helpless is obviously refuted by the existence of big, powerful unions and big settlements in some industries. Why make these more powerful to try to get at other industries where the current model didn't seem to work? And why use more of the same old model to do it when that model didn't work?

The proposed new powers by and large will not change bargaining power much except to confuse things. I'd rather not be back here in a couple of years repeating all this.

Here are three items that should be happening now:

First, balance the purpose clause and at the very least delete the one-way handcuff statement "to improve terms and conditions of employment." Bargainers—I can speak from experience—will all just play the game anyway if saying that every demand on either side is somehow an improvement and arbitrators will be called in inevitably to split hairs over the difference. Oftentimes improvement is a subjective judgement in any event in a single collective agreement; you can only see it retrospectively over a long period of time and it's often a matter of opinion.

Second, don't multiply the weapons on both sides or either side. Either concentrate interventionist power only with the board and arbitrators once and for all and take it away from other legislation and from unions and business and have an arbitrated society, which I would not recommend as a proponent of collective bargaining, or reduce that kind of interventionist power, focus it on issues, limit it to the scope of the parties' nearest positions or to previously agreed language. It's far too sweeping the way it's designed currently.

Third, by all means open the processes on both sides as much as possible to daylight. Free speech, free secret ballot votes, meaningful times create informed consent, something sorely lacking for many employee groups now. The real power I had as a union leader originated from the fact that we held votes to okay our strategy every month of two and a half years of our toughest negotiations—votes based on elected representation by population and, finally, votes supervised by the Education Relations Commission by the entire bargaining union, not 10 or 12 people at a strike vote meeting a year before the strike date binding several hundred people in the bargaining unit for the future.

I would urge you to consider these points, the three key issues: balance throughout, especially the purpose clause; focused and fair powers of the board and arbitrators; freedom of information and choice for employees over unions and anyone else. These are the cornerstones of effective, progressive legislation and effective, progressive union-management relationships.

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I won't elaborate on the rest of the issues; they are just detail. I would certainly encourage you to ask me the toughest questions you've got. I think retail has been a target of this legislation. There are a lot of misconceptions about what we do, or don't do, with and to employees in this industry. I think we've got an extremely defensible operation, and I'm more than happy to answer any question you like.

Mr Jackson: On that note, first of all, thank you for your thoughtful brief; you bring with it a lot of experience on both sides of the collective bargaining table.

Visible minorities and women predominantly make up the workforce in retail, and I suspect they do as well with the Hudson's Bay corporation.

Mr Crisp: Yes, they do.

Mr Jackson: Part of that debate has to do with full- and part-time benefits. To what extent are there protections for women in these sensitive areas, even pension benefits, as a woman worker hits her 50s and has enjoyed full-time employment for many years? What kind of protections are there presently occurring in the retail sector?

Mr Crisp: You're quite correct; about two thirds of our total employee population are women, a substantial number, and we haven't completed the figures for employment equity or minorities. The protections are equal all the way around. The benefits are somewhat pro rata; they're smaller benefits for part-timers than full-timers. But I should point out that they're identical where we have full-time and part-time unions, as they are in the non-union setting for full- and part-timers.

We are about 10% unionized in Ontario. I think it's about 8% across the country. In Ontario, that represents about 13 or 14 collective agreements, and the benefits are identical throughout.

Mr Jackson: You referenced in your presentation about the concept of whipsawing smaller businesses, and in the retail sector that's very important. We know that the pending Sunday-opening legislation is going to adversely affect the small operators. Is it your contention that small retail operators will be adversely affected by the processes that may be set out in this legislation?

Mr Crisp: I think both big and small retailers are about equal, and in answer to that, I should make a comment that I've made in a couple of other settings. In Hudson's Bay, although it's one of the biggest companies overall in the retail business, it's sometimes hard to recognize whether you are a big business or a small business because we operate through individual stores, which are relatively like small businesses in some respects.

For instance, 200 or 300 people in a warehouse setting can shut down the entire company with a strike because they can choke off deliveries to the stores, and we'll be out of business within two or three days. A single store with 200 or 300 people in it could go on strike indefinitely. In fact, where we have non-replacement worker legislation in Quebec, in my tenure on the job, two out of the three stores that shut down never reopened after five-month strikes, because it's easy to walk away from a single store,

and if you know it's not going to make money as a result of the bargaining, why go on?

So it's very lopsided. Are we a big business that can be shut down on a broad scale by a few people and hurt 20,000 or 10,000, or are we a small business where it doesn't matter?

Mr Jackson: Could I put a fine point on the Quebec example? Would the benefits to the workers vary if it was a corporate decision to close that store in Quebec or if its closure was a function of the adverse bargaining climate and the forced closure of the store due to the strike?

Mr Crisp: No. As many companies do now, we run an internal set of policies and procedures that maintain equity for everybody. As legislation changes and we update those, we update our collective agreements at the same time. So everyone is treated equally, unionized or not.

Ms Dianne Cunningham (London North): I was wondering if you would remark somehow, with your past experience, with regard to replacement of teachers—I certainly was there when you were there—how you have a difference of opinion and how you may feel this law itself may have a different focus for different groups. Or would you say just what you've written in your brief: that is, under no circumstances should we be looking at a ban of replacement workers during strikes?

Mr Crisp: In the teacher setting I was in, there was no ban on replacement workers. In fact, the parents organized themselves into replacement teacher-workers. It wasn't very effective because of the scale of the industry. Quite frankly, I think the major difference between retail and other industries is this scale question.

It has nothing to do with replacement workers or any of the other issues, basically. It has to do with the power a union can or cannot wield by having a large number of members in a single location as opposed to a small number. That's why I think if one is going to make any changes at all in the legislation it would be better to favour participation mechanisms, free choice, cooperation and so on rather than focus on the old format of labour relations.

Mr Bob Huget (Sarnia): Thank you for your presentation. I've been going through parts of the areas you list as concerns. I want to focus on your point 4 for just a second, the organizing and picketing on third-party property. I guess it's important to realize that the amendments would allow for lawful picketing activities, lawful organizing activities, at the entrances and exits, I believe, to a retail business. They also provide that if that activity is disruptive or illegal, there can be restrictions put on that activity. I think it's an important point to consider. I know you mention picketing and leafleting having a detrimental effect on consumer confidence, but I also think it's a fair way for workers who choose to organize to be able to do so.

In broad terms, you raise a number of issues here. Time doesn't permit going into each and every one of them, but I think in very broad terms I would like your views as to how this legislation would specifically affect relationships with your employees now. The reason I raise that is that in your brief a number of times you mention the progressive nature of the retail industry and the Hudson's Bay Co in

particular, the fact that you have very much a workplace-responsive, responding and changing attitude as far as addressing workers' concerns. I would assume from this that you have a cooperative relationship with your employees currently.

What I'd like from you are some specific examples as to where this legislation would do anything whatsoever to interfere with your relationships with your employees, which apparently are very cooperative now.

Mr Crisp: We do think they're pretty good. I think there was a second question in there which maybe I can answer briefly first on third-party picketing. Again, this is an issue of the scale of the business. Some pickets outside a Hudson's Bay Co store in a mall are not going to devastate the Hudson's Bay Co business, but for a small employer with one door who can be swarmed by pickets, there's a serious issue here. I agree there are some regulations built in, but in my experience—I'll give you a Quebec example. It is not unusual for the union to storm through the store on the first day of a strike, smashing glass cases and plastering stickers on all the windows, which are very difficult to remove. Obviously you can't prevent that kind of thing even if you stop picketing in the malls, but I think it would be better for this legislation to address violence on picket lines directly rather than backwardly.

On your second question, how are the relationships going to be affected, the real effect comes from the increased powers of the labour board and the arbitrators. Yes, we think we have fairly good relationships. We work fairly cooperatively. We have very few grievances, for instance.

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One of the reasons is because frequently issues get referred to the labour board. Some of our unions take the position: "If the government has a process for handling this, we give it to the government. We don't want to work it out. We tell our employees that the government has a way of solving this." So we never get to come to grips with the issue face to face and work it out. We end up in front of an arbitrator who doesn't understand the business process.

This legislation introduces an enormous amount more of that opportunity. A first contract is only a start. In any collective agreement the labour board will be able to produce new terms and have hearings on the issues and so on. That fact alone, which has hardly been talked about in the discussion of the bill, to me is probably the biggest issue in the entire legislation. People are overlooking it entirely.

We don't want a wedge. We don't want board arbitrators and private arbitrators jammed in there who don't know what our business is all about. We want to talk to our employees face to face. If the union's there, fine, but don't keep the arbitrators there. We don't want them.

The Chair: Mr Ferguson, briefly please.

Mr Will Ferguson (Kitchener): We've heard the number of dislikes you have about the legislation. Could you tell us what you would be able to support in the proposal?

Mr Crisp: Because the overall key issues are so much in the wrong direction, from our view, it's really hard to pick out single pieces and say okay. We're glad to see a

secret ballot introduced in some areas and vote levels set and things like that. There are a number of these issues that have gotten major discussion in the press that from our individual point of view are neither here nor there, but the fundamental, underlying processes are just not right for 1992 and the future.

Mr Offer: Thank you for your presentation. I have a question on the issue of organizing on private property. I ask this question because of the particular business you're involved in. As you know, the legislation does permit that. You'll also be aware that it is not necessarily limited to shopping malls but rather has a much broader application and implication.

We have heard, for instance, that department stores such as yourselves might be involved in licensing out parts of the store. I'm going to use as examples cafeterias, photo marts and travel agency stores. The reading of this legislation on that one aspect would allow picketing in front of, for instance, a cafeteria, a photo mart or any licensee of your operation that would be found within the department store.

My question to you is, first, whether you are engaged in the licensing part of your department store operations; second, whether on a reading of this legislation this could take place, and third, what the impact in your opinion would be to the shoppers coming to your stores.

Mr Crisp: Not only could but most certainly would take place. Yes, we do license a number of operations. I'll speak about our beauty salons because that's a good example. We also have shoe repair, key chains, food services, tailor shops and that kind of thing which are often licensed, but the beauty salon is a good example. The bill would mean that the picketing, if and when it does occur, would occur in front of the beauty salon inside the Hudson's Bay retail store.

In fact, we had a small strike in our beauty salon in the Queen Street store that used to be Simpsons a year or so ago. The picketing was out on the street, but under this legislation it would have been on the third floor in front of the beauty salon. I guess my remarks earlier apply: The more restricted the space, the more danger there is of confrontation, violence and so on.

It is also going to put us in a peculiar situation, because our internal security will have to police this in some way. We're going to be in constant danger of some kind of conflict of interest if our security people overstep whatever the labour board thinks is its jurisdiction.

Mr Jackson: Or they refuse.

Mr Crisp: Yes. Also, I can picture the police not being very happy to come in and stand all day on the third floor and supervise the picket line there, so there are quite a number of problems here. This is one of the unknown areas of the legislation that I referred to. There are many unknowns. We have no idea. It could work; it could be a disaster. A large part of it depends on how the courts, the labour board and the arbitrators implement it. What this does is take away a tremendous amount of power from the parties to sort these things out and throws it into a very lengthy process that just drives people further apart.

Mr Offer: When we think about how the board may make decisions, we have to layer on top of that the new objects clause as proposed under this legislation.

Mr Crisp: Absolutely.

Mr Offer: My second question has to do with an issue which is very important, very serious. It was brought up last week and you have brought it up again today. That is the issue of arbitrators being able to determine absolutely the real substance of issues. To me, when I look at the amendments—I know this might not be the stuff that things are discussed—it is really an issue of whether the unions or the management have as a fundamental right that of due process. I know you have operations throughout the country. Could you share with us whether there is, in your mind or in your experience, any legislation which really supersedes the issue of due process, as has been done in Bill 40?

Mr Crisp: No, none at all, to my knowledge. As soon as you open the door to going beyond the clauses in the agreement that the parties agreed to and allow arbitrators to get into “the real substance,” we don’t know what that will mean. First of all, I think it’s going to take 10 times as many arbitrators. I use that number advisedly—10 times, not five or three times. About 10 is my guess.

Right now the parties often have trouble choosing an arbitrator and getting one they both perceive as fair in anything under a year or two. A couple of weeks ago I had one arbitrator give me a date for an arbitration two and a half years away, because they’re so booked up, the good ones. Now all of a sudden we’re going to multiply the number of arbitrators from about 100 to about 700, 800 or 1,000. Are we going to train them? Are they going to know what these issues are about when they start to define “the real substance,” which goes way beyond what they could do before? We haven’t got a clue.

When we say that it’s going to create business and economic uncertainty, this is the kind of thing that even when the legislation is passed and we think we know what it means, we’re not going to have a clue what it means until we see what those 900 new arbitrators do.

The Chair: I want to thank you and Hudson’s Bay Co for coming here and participating in this process. Your comments were interesting and I’m sure will be valuable to committee members when they develop this to the point of clause-by-clause consideration.

Mr Crisp: Thank you, Mr Chairman, members.

The Chair: I want to remind people that these are public hearings here at Queen’s Park; the public is entitled and indeed encouraged to attend. There’s seating for members of the public to sit as observers. We’re sitting today until 9 o’clock; we’ll be here until 5, and then from 6:30 until 9. We’ll be sitting here tomorrow from 10 am through into the evening. People are encouraged to participate in person. Of course, transcripts of these proceedings, a portion or all of the proceedings, are available free of charge by way of Hansard to anybody who is interested, simply by calling your MPP’s office or the clerk of the standing committee on resources development.

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WELLAND AND DISTRICT LABOUR COUNCIL

The Chair: The next participants are from the Welland and District Labour Council. Please tell us your names, your positions and commence with your presentation. Please save the last 15 minutes for dialogue.

Mr Robert McCallion: Good afternoon, Mr Kormos. I’d like to introduce the delegation with me today. On this side I’ve got Len Hircsu, who is the president of the Canadian Auto Workers, Local 275, in Welland. My other colleague is David McIntosh. He’s the president of the Niagara Peninsula Steelworkers area council.

Mr Chairman and members of the standing committee, the Welland and District Labour Council represents thousands of unionized workers in and around the Welland area and we’re here today to speak to the standing committee on the government’s proposals for the reform of Ontario’s outdated labour laws.

We welcome this opportunity to consult on our proposals for ensuring that workers in all of Ontario’s sectors have improved access to the benefits of union organization and collective bargaining.

While the business community continues its intensive campaign of denouncing reform as more sand in the wheels of industry, we are simply saying that workers should finally be given recognition as legitimate partners in the workplace and in the provincial economy and should be able to freely exercise their right to choose to belong to a union.

Even though many employers in Ontario have developed successful relationships with unionized workers, there remains a host of them who practise suzerainty at best or outright hostility at worst. Moreover, those employers without organized workers continue to do everything in their power to oppose unionization, publicly branding it as a clandestine or illicit organization which should be feared by all the people of Ontario.

The labour movement has faced this well-organized opposition for decades, and through our proposals for reform, we hope to finally win the recognition and responsibility that workers deserve in today’s world.

We would like now to continue on to outline some of the areas where we feel changes to the existing legislation are most needed.

The right to organize: As businesses in the province have and use the right to freely associate and join their unions, for example, the chamber of commerce, the manufacturers’ association and so forth, we support the expanded right for workers to organize under the government proposals.

We must point out, however, that unnecessary exclusions still exist, particularly in the area of domestic workers. It’s clear that unless provisions for a sectoral type of representation are developed, the right to organize is essentially meaningless.

We have attached to our brief an article from the *Globe and Mail* of Thursday, August 6, 1992, and this is just one of the examples of the horror stories that have taken place and exist in our province. In this province, there’s

absolutely no reason for things of this nature to take place, so we feel this should be addressed.

The provision for sectoral organization is one that will have to be addressed in a number of instances if workers are to be given a real chance to exercise their right to join unions.

Organization and certification: We can only say that there is just one way to ensure the protection of workers during a union organizing drive and that is the total prohibition of discipline and discharge unless the employer obtains leave from the Ontario Labour Relations Board in advance. Without this restriction, bosses will continue to destroy the workers' right to make a free choice to join a union.

There are numerous cases—we've encountered this before—where people have been threatened, people have been discharged, and we have to go through the process. It takes months and sometimes years to get people back. What happens is that the act of people being disciplined has a very punitive effect. We feel there's no place for that in a workplace.

Part-time employees and appropriate bargaining units: The labour council welcomes the amendments to section 6 of the act, which direct the board to find that a single union of full-time and part-time employees "shall be deemed by the board to be a unit of employees appropriate for collective bargaining." These are subsection 6(2.1) and 6(2.2). To combine these two groups of employees, it will be necessary that a simple majority, 50% plus one, of the combined groups of employees be members of the union. Where the union has less than 55% support, separate full-time and part-time units will be required.

These amendments will help unions address the low rate of unionization among part-time employees, a considerable proportion of which are women and visible minorities. The addition of part-time employees can help strengthen a single bargaining unit rather than create another weak one. At the same time, the combining of bargaining units can facilitate the efforts of an increasing number of part-time employees to improve their benefits and compensation levels as well as their job security.

I'll deal with the legislation regarding the use of scabs in the province. The legislation restricting the use of scabs during a labour dispute is of the utmost importance to all of Ontario's working people. Employers continually take advantage of the unemployed by offering wages generally in excess of the normal and hiring them as scabs.

In addition, these unfortunate workers are not provided with any proper training, correct operational procedures or the health and safety aspects of their jobs, therefore exposing them to possible severe injury and further degradation of their status in our society. It's one of the cruellest exploitations of working people in the province, the continued use of scabs throughout the province.

Since anti-scab legislation was introduced in the province of Quebec, the violence, number and duration of labour disputes have been drastically reduced. Recently, Le Conseil Du Patronats, the largest Quebec employer group, has withdrawn its legal opposition to this legislation.

Finally, coming to the conclusion that this legislation works to the benefit of all, hopefully the employers of Ontario will not take nearly as long to reach this same

logical conclusion. An interesting aside is that 95% of industrial disputes in contract legislation in Ontario are resolved without the use of industrial action.

The right to return to work: The Welland and District Labour Council supports the new statutory provision, section 75, concerning a back-to-work protocol that parallels that of other provinces such as Manitoba and Quebec. This amendment will apply whenever the union and the employer cannot agree on the terms for reinstating striking employees at the termination of a lawful strike or lockout. Where there is no agreement on reinstatement, the employer is now obliged to reinstate—"shall reinstate"—the striking or locked-out employee to the position held before the strike unless there is not sufficient work.

Where work is insufficient, employees must be recalled in accordance with their collective agreement recall provisions. Where these do not exist, the recall must be in accordance with each employee's length of service. Striking employees are explicitly entitled to displace non-bargaining unit replacement workers.

This amendment will have a positive impact on those few lengthy strikes where employees and their union have little bargaining power left. It will also throw into question whether or not an employer, following an employee's reinstatement, can discipline or discharge an employee for conduct during a strike.

Employee benefits continuation: Section 81.1 requires employers to continue paying employment benefits, other than pension benefits, when a strike or lockout commences, provided the union tenders payments "sufficient to continue the employee's entitlement to the benefits." The employer is prohibited from denying or threatening to deny such continued benefit coverage.

This benefit continuation amendment parallels that of other jurisdictions such as Alberta, Newfoundland and Manitoba, as well as becoming the norm in most Ontario labour disputes.

We've had some bitter experiences with this in the past dealing with some major corporations that commenced with a strike. The first thing they did was discontinue the hospitalization and the drug plans for their pensioners, and we had to take the pensioners out in November and have them picket and embarrass the major corporation back into paying the benefits.

The Human Rights Code: The Welland and District Labour Council feels that the Human Rights Code should be included in all collective agreements. This would save workers untold suffering, frustration and lengthy delays in resolving violations of their human rights. These problems could be resolved by experienced unions in the arbitration process in a more humane and expedient manner.

To conclude, we must comment on the unfortunate stand taken by the business community on the issue of labour law reform. They have convinced themselves that the democratically elected NDP government and its modest proposals to amend the Labour Relations Act will leave the province in a shambles. They would have you believe that upon enactment, these reforms would cause investment to dry up, manufacturers to relocate and businesses to close.

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For example, in our community of Welland, the local development commission was quoted in a brief to city council as saying, "If enacted, Ontario labour laws, already very favourable to unionization, would become the most anti-business in North America." They were asking council to formally oppose labour law reform. Fortunately, the Welland council rejected the request after hearing from representatives of our substantial labour community. They recognized, we are sure, that unions have been good for the city of Welland. In fact at one time Welland was listed as having the highest per capita income in all of Canada, due in large part to the influence of organized workers and their ability to negotiate a fair share of employers' earnings.

The facts are that organized workers have played and will continue to play a role in the structuring of workplaces in Ontario, and have been a positive influence on the economy of the province as well as a driving force behind progressive social changes.

Employers and our friends in the opposition must stop trying to terrorize the citizens of Ontario and begin working with business and labour in order to meet the challenges of the future. They cannot continue to blame the devastation caused by Mulroney and the federal Tories and their free trade disaster on this government and organized workers in this province.

They cannot continue to mislead, either through ignorance or by malicious design, the citizens of Ontario in the manner that they have throughout their anti-reform campaign. As a very recent example, we include an article from the Welland Evening Tribune of August 4, 1992, where our local chamber of commerce is quoted with obvious falsehoods about unions and statements that seem designed to panic our residents on the issue of labour law reform.

We must ask ourselves if the issue is really one of opposition to labour law changes that will bring us into line with other jurisdictions across Canada or whether it is a continued backlash against the democratically elected government as a whole.

Finally, Mr Chairman, I'd like to express our appreciation to this committee for giving us the opportunity to further consult and express our views on labour law reform, an issue we have been concerned about for many years. We urge the government to stick with its decision to update the Labour Relations Act in order to meet the many demands of our rapidly changing society.

We urge you to seriously consider the recommendations that we have presented to add further improvements which we feel are necessary in order to make workers' rights to choose a union free and unfettered.

This concludes our brief, and we're willing to respond to any questions from any members of the committee.

The Chair: Thank you, sir. Mr Fletcher, five minutes.

Mr Derek Fletcher (Guelph): Thank you for your presentation. You've stated that through the years there have been a lot of benefits reaped from unions and how they've worked with business. Can you be more specific, especially in the Welland area? Be specific to your area, if you'd like.

Mr McCallion: Welland has been very lucky. If you go back to the history of Welland, back to around 1930 and so on, a great group of new Canadians, as they call them now—immigrants—came to Welland. They organized and they persevered. They fought their bosses. At that time, workers had to line up outside the steel plants in Welland, and the foreman would come out and pick who he wanted. These people fought all this. They raised awareness. They fought for pensions, they fought for health benefits, they fought for a multitude of things. They fought for their proper share of the goods that they produced. It's a very simple concept, that we should do that.

Mr Fletcher: Do you think anything in this legislation—and I've heard part of your argument—is going to be detrimental to Ontario as a place to invest, as a province that is, in the words of your chamber of commerce, the most pro-labour place in the world? Is the legislation going to tip the balance?

Mr Len Hircsu: I would like to address that, Mr Fletcher. I think the proposed changes to the Labour Relations Act in fact will enhance competitiveness in businesses across Ontario. The concept behind the changes is to bring forth a more cooperative effort between unions and management. I think the competitiveness argument, which is used by a lot of businesses across Ontario, is false, simply because you can always go somewhere else to find cheaper wages; if you don't go to Mexico, you can go to South Korea. There's always a place for cheaper wages.

The key to making business competitive is for cooperation between the workers—the grass roots of any business—and the employers. These changes will enhance the workers' ability to step forward, with the protection of a labour union, and make positive, concrete suggestions and lend their expertise to the business they're employed with.

Mr Fletcher: Do you feel, from a labour perspective, that Bill 40 is promoting the atmosphere of working together? Is it knocking down barriers or is it creating more walls?

Mr Hircsu: No. The anti-scab legislation especially is one, where workers now can freely participate in collective bargaining, without fear of having someone come in to take their jobs, without fear of reprisals. If, God forbid, they ever have a labour dispute, their jobs are safe when they come back, when both management and the unions have sat down and bargained in good faith and reached a fair collective agreement which, as Brother McCallion says, in well over 97% of the cases in Ontario is actually the fact.

Mr Offer: I have a question on the issue just brought forward about cooperation and respecting the rights of workers. You won't find a great deal of argument from me on that issue. However, I want to address the issue in terms of Bill 40, specifically for the part-time workers of this province.

I want to try to give you some sort of scenario. There is a setting where there are, for instance, 100 employees, of whom 75 are full-time and 25 are part-time. There is a vote about the combination of the full-time and part-time and the vote is that 55 of the full-time say yes to combining

full-time and part-time and zero of the part-time workers; as far as they are concerned they do not want to be combined. Under the legislation, it doesn't matter; they're combined. I'm asking you the question as to whether you feel the rights and real and true wishes of those part-time workers are really addressed by a provision of this kind and, if so, how so?

Mr McCallion: Brother McIntosh will answer this question.

Mr Dave McIntosh: It's been our experience over the years that when you have two separate agreements dealing with part-time and full-time workers, it gives management a lever to play one off against the other. This happens frequently. It's quite common, particularly in our nursing homes in this province, where they are unionized, where both full-time and part-time help work under the same basic contract but with addenda to address the issues of the part-time workers. I see no reason why that couldn't be done overall in industry, whereas right now it is not a general practice, except for the nursing homes.

Mr Offer: I thank you for the response, but in your response you spoke about management having a lever. My question was really directed to the rights of those part-time workers, the men and women in that category who may have decided that they don't wish to be part of a unit that has in it a permanent force—

Mr McIntosh: Your question was hypothetical. It's pretty hard to answer a hypothetical question. In my experience, I find it very hard to believe that part-time workers would, as a bloc, vote against going into a contract with full-time workers who generally have greater benefits and better wage levels and working conditions.

Mr Offer: Yes, you're absolutely right. My question was hypothetical, without doubt, but the reason for my question was that it has to be hypothetical because this is not now allowed in the act. My question was really directed to the principle of the right of those part-time workers to have their true wishes demonstrated, but I understand how you've responded. I would have liked, if at all possible, to have heard a response dealing with the principle of whether the rights and wishes of the part-time workers of this province should be given equal hearing with those of the full-time workers.

1450

The Chair: Mrs Cunningham, nine minutes.

Mrs Cunningham: As to the press clipping you referred us to initially with regard to domestic worker legislation, I'm wondering specifically how you see this bill helping in that regard. I consider it a problem and I'm wondering how this bill will help.

Mr McCallion: The only way is that you'll have to have some sort of advocacy program and it'll have to be through sectoral representation. If you're going to try to organize individual domestic workers—that's what we're talking about, individual domestics?

Mrs Cunningham: You referred to it and I'm aware of the need. I'm just asking, as you put it in the context of this bill, where this bill will be helpful.

Mr McCallion: This is a recommendation to you to improve this bill.

Mrs Cunningham: As a politician, I stand on the stage and somebody waves something like that around to the audience, and it's not unlike waving around the workplace and occupational therapy improvements that went on; it's just out of context and doesn't relate. If that's your point, that's fine, but I thought you were telling us there was something in this bill that was going to be helpful. I wasn't aware of it, and that's why I asked the question.

Mr McCallion: We saw it as a shortcoming. We feel, as responsible citizens, that it's an outrage that this happens in this province, and I'm sure you would support that.

Mrs Cunningham: All I can say is that if I were in government right now, I would be trying to pick those kinds of things and fix them, as opposed to coming out with a blanket statement with some pluses and minuses, as this legislation does. I don't think anyone who has come before the committee hasn't said they need some changes, but with that kind of thing maybe you could have been very specific and told us exactly what section of the bill. Maybe you will, because these hearings are going on for the next six months. Maybe you could take it under advisement and tell us how to make those kinds of changes; that would be most helpful. That's my first point.

My second is this: Last week we heard from one of the presenters that, with regard to the anti-replacement worker provisions—which is how I refer to it; I think you use different words, but that's how I do it—in Quebec, there were some 652 more strikes than in Ontario, coupled with higher unemployment. I have to make a statement in this regard, because that has been brought to my attention. I'm wondering how you would refute that or what you could give us, as a committee, with regard to that kind of concern. How can we address it?

Mr McCallion: I am concerned as a union representative. The way I see it, the use of replacement workers is an exploitation of the unemployed in this country. To say the use of replacement workers or their disuse is going to have any great, significant economic impact on the province I think is utter nonsense.

Mrs Cunningham: Then I have to ask the question again, perhaps in a different way. You talked about the importance of bringing the Ontario legislation in line with other jurisdictions. Perhaps you could give us an example of which other jurisdictions, and then we'll go back to my question, which you didn't answer.

Mr McCallion: I'll defer it to Mr McIntosh.

Mr McIntosh: I'll tackle your first question. There were 650 more strikes in Quebec than there were in Ontario? Is that correct?

Mrs Cunningham: Yes.

Mr McIntosh: How many fewer strikes is that in Quebec in the past 10 years?

Mrs Cunningham: Since the anti-replacement worker provisions have come in, that's my information. You see, I'm in the enviable position today of asking questions. It's

not my job to influence this committee, it's yours. So I don't know.

Mr McIntosh: I don't have any figures on it, but I would say that in Quebec that legislation has dropped drastically the number of strikes, albeit there are more strikes in Quebec. One strike is one too many in Ontario as far as we are concerned, and this anti-replacement worker legislation would tend to drop that number again in the 3% of contracts that are involved in strikes.

Mrs Cunningham: Can I ask another question? Do you really know whether, since the introduction of that provision in the Quebec legislation, there are more or fewer strikes? Do you know that?

Mr McIntosh: There are fewer strikes. I don't have specific numbers to give you today. Our information from the Quebec Federation of Labour is that there are fewer strikes.

Mrs Cunningham: Mr Chairman, do we have the answer to that question?

The Chair: No, but we can make sure that the research staff—you're doing it right now—will make that a priority.

Mrs Cunningham: We're trying to make good decisions here, and the inference was the opposite for the committee members.

Mr McIntosh: All I can do is pass along the information that I have, and I have no specific numbers.

Mrs Cunningham: That's fair, and I'm not arguing the point, but I think all of us have the responsibility to educate ourselves, and we're here for a long time, you know, to try to make things better.

Mr McIntosh: The one thing that legislation has done is to stop the shooting of people during strike situations in Quebec. There haven't been many bodies lying around during a strike in Quebec. That used to be the practice prior to 1978.

Mrs Cunningham: So there may be some good things and may be some downsides, and we should be looking at both of those.

Mr McIntosh: There are definitely some very good things in it if you look at fewer bodies lying around, yes.

Mrs Cunningham: Could I ask another question with regard to the previous presentation? I did note that the three of you were sitting there listening carefully to the previous presenter. Have you looked into or given any thought to the point he made about having more arbitrators and a more costly process? If you have, I'd like to have your views on that. Realizing that none of us has crystal balls, you must have some views on what he said.

Mr Hircsu: One thing I think a lot of people fail to realize is that currently in the arbitration process, and it would be under Bill 40 as well, the arbitrators only have the right to interpret or make a ruling on the current language of a collective agreement. They only make rulings outside of the current collective agreement if the language is ambiguous.

In fact, as to the hiring of hundreds more arbitrators and costing much more money, one has to realize that

there are two sides to this. Both the union and the employer have to share equally the cost of arbitration, and speaking from the union standpoint, when the arbitration costs are \$3,000 to \$4,000 per arbitrator per session, I cannot see, using common sense, that there would be a tremendous increase in the arbitration cases. In fact, going back to my original point, arbitrators can only rule on the collective agreement, the interpretation of the current language. They cannot go beyond the bounds of that collective agreement.

Mrs Cunningham: I can only say as a closing statement that I hope you're right.

The Chair: Thank you, Mrs Cunningham, for making your questions within the time frame allowed. Dave McIntosh, Robert McCallion, Len Hircsu, here on behalf of the Welland and District Labour Council, we appreciate your interest in these matters. You speak for a group of organized workers who have a distinctive and significant history and who have made a substantial contribution to the labour movement in the province. We thank you and that membership for your participation in the process. Take care.

Mr Jackson: Your re-election, too.

The Chair: One never can tell.

The next participants are the Office and Professional Employees International Union. Will you please come forward and tell us who you are and what your positions are.

Mr Brad Ward (Brantford): On a point of order, Mr Chair: Before we begin the delegations, Mrs Cunningham made a request of legislative research. I was just wondering what that request was, so we can make sure we get the appropriate information.

The Chair: Legislative research has taken note of her request and is working on it almost right now in a hurry to get specific data on the frequency of labour disputes and strikes before and after the anti-replacement worker legislation.

Mr Ward: In what time frames, 10 years before?

Mrs Cunningham: No, since it was introduced.

The Chair: He's going to do his best to get as complete a set of statistics as possible so that people can do what they want with them.

Mrs Cunningham: Just to clarify that issue for all of us.

Mr Ward: Does that include how many man-hours are lost?

Mr Jackson: Person-hours.

Mr Ward: What about violence?

Mrs Cunningham: I think I was very clear.

1500

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION

The Chair: People, your half-hour has started. Please tell us who you are, what your status is and what your titles are. Please try to give us at least the last 15 minutes, if not more, for questions and exchanges.

Ms Janice Best: I'm Janice Best, vice-president of the Office and Professional Employees International Union,

representing the members in the province of Ontario. With me is Carol Dupuis, a representative with the central Ontario council of our organization, and Robert Dury, a representative of our largest local union in Ontario, Local 343.

Just to tell you something about our organization, our total membership is approximately 130,000 with just under 6,000 members working in Ontario. We are divided into regions and the province of Ontario represents one region within our international structure.

It gives us great pleasure to be here today and we appreciate being granted this time to express our concern to the members of the committee. We have submitted a written brief with comments on most issues pertaining to Bill 40, the act to amend the Labour Relations Act concerning collective bargaining and employment.

However, due to the time constraints we would like to take this opportunity to discuss just a couple of areas where we feel we need to put the most emphasis. We acknowledge that the panel members may seek additional information on certain issues and we'll be pleased to answer any questions.

The four issues we would like to address are unfair labour practice complaints, the percentage requirements for automatic certification, first-contract arbitration and replacement workers.

Dealing first with unfair labour practice complaints during organizing campaigns: It is unfortunately not too uncommon for our organization to be involved in cases of unfair labour practice complaints filed by individuals who allege being wrongfully discharged or disciplined during an organizing drive.

At the moment we have two cases pending where workers have seen their employment cease while the certification and first-contract arbitration process unfolds. One location involves a small lumber plant in northern Ontario where at least two men, each with an extremely impressive number of years of service to their credit, allege being unjustly laid off from their jobs. These men supported the introduction of and were active in introducing the union to their workplace. Although several months have elapsed since this occurred, the process is not complete and their case has not yet been heard. In fact, the case probably won't be heard finally until the end of this month or into September. It's been more than six months since these men were discharged.

Still outstanding, as well, is the case of an individual who worked for an organization here in Toronto. The individual was on the union organizing committee at his workplace and was unjustly dismissed in 1991. In fact, he was dismissed in July 1991, more than year ago. No hearing has been held to date.

We'd like to emphasize that we strongly support the amendments to allow for 15-day expedited hearings in cases like the ones mentioned above. We believe that the board's commitment to render a decision within a 48-hour period thereafter demonstrates a firmer commitment to the increased protection of workers.

The reality is that some employers do engage in unfair practices, and delays of months are most unfair to

the employees who are discharged during an organizing campaign.

Certainly, seeing a union organizer fired inhibits the other employees from engaging in their lawful union activity. A speedy resolution of such complaints is necessary with no loopholes left to promote undue and unreasonable delay.

Automatic certification: We had strongly hoped that the government would lower the requirements for automatic certification to 50% plus one. For some unknown reason, this has not been done. We are very disappointed that this government has not seen fit to amend the process to reflect a simple, democratic majority vote. We cannot foresee any reason for leaving the automatic certification process at 55%, other than to continue to make it difficult for unions to organize workers or, if I might put it in another fashion, for workers to organize themselves into unions. We are not talking here about empowering unions; what we're talking about with amendments to the legislation is making it less difficult for working men and women who want to be represented by a union to achieve that end.

We'd like to go on record as stating that we regret the lack of movement on this issue and would like the government to reconsider its position. There are no other issues that people vote on that require a 55% majority. Anything else we do in life, including electing people to office, we do with a simple majority. There is no basis for 55% for automatic certification.

With regard to representation votes in the certification process, we are pleased to see that there has been some movement on the required percentage, although it has not been lowered to that of other areas within Canada such as Saskatchewan, where it is set at 25%. We feel that there may be occasions when the change to 40% could benefit some workers.

The next issue we'd like to address is first-contract arbitration. We would like to state that we were pleased with the amendment that will allow either party to apply for first-contract arbitration without having to establish that there have been unreasonable bargaining tactics or undue delays. Oftentimes a group of employees who experience the greatest employer resistance during the organizing drive will also have the most difficulty achieving a first contract. Due to the prerequisites which are in place prior to the amendments, disputes about having access to the arbitration process were often just as lengthy as the organizing and negotiation processes themselves.

However, we are not pleased to learn that the application can only be made once the parties have been in a legal strike or lockout position for 30 days. We would have much preferred to see the amendment reflect the proposal from the Ontario Federation of Labour, which stated that access to first-contract arbitration should be granted upon request by either party. We do not support the theory that this would eliminate the initiative to bargain collectively. As a matter of fact, data produced by the Ministry of Labour demonstrate that in Manitoba, where this process is available 90 days after certification, it has not resulted in all first contracts having to be arbitrated. Therefore, although we support the move to allow for easier access to first-

contract arbitration, we do not support the time constraints that have been placed on the process.

Replacement workers: Perhaps the most important improvement in the act has been the move to place tighter restrictions on the types of employees who can perform the duties of striking workers. We are very pleased to see that the government has finally given serious consideration to this issue. The Ministry of Labour data on the subject, which was available on fact sheets on changes to the Labour Relations Act reform, states that the replacement worker law in Quebec has been successful in reducing picket line violence and has been responsible for producing less lengthy strikes. Although there may have been more strikes in Quebec than in Ontario, it's clear that there is less violence, and the number of days lost due to strikes appears to be less.

1510

The ministry has also released some statistical evidence on the number of strikes in Ontario in 1991. It would appear that of the 94 strikes reported in 1991, 56 employers continued to operate. The data indicate that where strikes occur, replacement workers are used quite frequently. It also indicates that work stoppages last about 30% longer and are much more confrontational when replacement workers are used. As a matter of fact, the ministry data report that all five cases of major violence on picket lines which occurred last year happened where replacement workers were being used.

Most members of the Office and Professional Employees International Union were fortunate not to have had to resort to strike action in 1991. However, at a small workplace where a strike did occur and replacement workers were used, striking workers reported feeling a great sense of frustration during the work stoppage. In fact, the moment the replacement workers walked across their picket lines and through the front doors into their place of work, the morale of the group of striking workers plummeted. They became very fearful about their jobs, about their future, and their will to continue to struggle for the things they were struggling for disappeared. I think that as a result of that employer using replacement workers, those people felt a need to return to work sooner than they would have wanted to.

We feel the legislation is still somewhat too permissive in allowing a variety of other types of workers to perform the duties of the striking workers, such as supervisors and other non-striking employees. We would like the government to consider strengthening the language.

In conclusion, we would like to emphasize that the general provisions of the amendments contained within the act are welcomed by our organization and we look forward to its implementation. The improvements in areas such as adjustment and change in the workplace, where the government has proposed the introduction of a work organization and partnership development service, which is designed to help parties adjust to major change resulting from economic restructuring, is definitely demonstrating a stronger commitment to the promotion of employee-employer relations. Also worth noting is the introduction of the purpose

clause, which will provide a clearer definition of the objective of the act.

In closing, we would like to take this opportunity to thank the panel members for granting us this time to express our concerns regarding these amendments.

The Vice-Chair (Mr Bob Huget): Thank you very much for your presentation. Questions?

Mr Offer: I have two areas I would like to explore if time permits. The first deals with your concern that the automatic certification percentage was not reduced from 55% to 50% plus one, as you feel it is a majority that is understood not only in organization but certainly in a variety of other ways as something which is acceptable.

I would like to deal with that principle and how it applies to the part-time and full-time workers, because as you've said that you agree with the principle of majority, I think a lot of people would say, "I understand that full well." You then go and say that the part-time provision is also fine.

The difficulty I have, and I would ask if you could help me out with on this, is that under the legislation the rights of part-time workers—on page 22 you say, "It is a widely accepted fact that the majority of part-time workers are women and that another large portion are often visible minorities." It is clear under this legislation that the rights of part-time workers may very well not be heard in a vote of combination between them and full-time workers.

I apologize for the lengthy question, but if we accept the principle of majority, then shouldn't it be that if a majority of part-time workers wished to be combined with full-time workers, that should suffice and, as such, this legislation should be changed to reflect that?

Ms Best: I'm sorry. Could you just give me the last part of the question again?

Mr Offer: Here's the situation: You say that majority is fine for automatic certification.

Ms Best: Yes.

Mr Offer: For instance, if there are 100 employees in a unit, of which 75 are permanent and 25 are part-time, and 55%—55 permanent workers—say yes to combining part-time and full-time, and zero of the part-time—in other words, no part-timer—wish to be combined, under the legislation they're combined. I want to know from you, how do we reconcile these two different principles?

Ms Best: I don't think there is a reconciliation necessary. They're all employees; they all work for the same employer. We don't view part-time as particularly different. If the majority of the employees wish to be represented, that's the way it should be. I think the existing legislation really continues to discriminate against part-time employees and keeps them from getting the benefits of unionization.

Mr Offer: Mr Chair, do I have time for one further question?

The Vice-Chair: You have two minutes.

Mr Offer: Thank you. I appreciate the response. One area that you spoke about in your presentation dealt with membership lists. You said that though it's not in Bill 40,

you would certainly want that list to be provided. I have a concern, and maybe you could help me as to this concern, that when one is obligated to provide a membership list, then of necessity you're providing not only names but in many cases addresses, and if not addresses, then certainly they would be available.

There are an awful lot of people—employees, men and women, workers—who might not wish that to take place. How do we reconcile the principle, as you've indicated, of providing that information with the principle that those workers deserve to have their names and addresses kept confidential from anyone?

Ms Best: I recently went through an organizing campaign where the employer, even on the day of the certification application, hadn't properly prepared the lists. We were at the labour relations board from 9 o'clock in the morning until 10 o'clock in the evening, while the employer provided information as to the lists of the employees in the appropriate bargaining unit. This was a complete waste of time and resources. If legislation provided that those lists had to be provided in advance, then the process could have gone much faster and much more quickly. I don't know how you deal with the question. The union still gets to see the list of employees at a point in the process, so I don't think providing it ahead of time makes any difference to the privacy question of the employees involved.

Mrs Cunningham: You seem to have done a great deal of research for this brief and so I'm complimenting you; I'm finding it very helpful. In fact, to some extent you've answered the question I asked before and maybe we'll expand on it. I'm wondering if there's even more that you know that isn't in this brief, so I'm going to ask a question with regard to page 28. It's on the same topic. The reason I ask on this topic, about replacement workers, is because it seems to be the one that I get asked the most questions about. It seems to be the one where, "We're different, other than Quebec, from the other provinces," looking at your graph at the back and the kinds of things that others have in your view gained and are making legislation.

I'm wondering, of those 94 strikes that were reported in 1991 in Ontario where 56 employers continued to operate, and you describe what happened where they continued to operate with regard to the duration of the strike etc, do you know how many of those businesses in either category continued to operate or didn't continue to operate, where they in fact continued to keep their businesses operating at all? Is that something you looked into?

Ms Best: I'm sorry.

Mrs Cunningham: For instance, after the 94 strikes, did everybody go back to work and did all the companies continue to operate?

Ms Best: Oh, after the strike?

Mrs Cunningham: Yes.

Ms Best: We don't know.

1520

Mrs Cunningham: I just wondered if there was something interesting we should look at in that regard. I base my question again on one of the previous people who

came before the committee who said that two or three of their retail stores closed in Quebec. That concerned me a little bit. If we're looking at this, we perhaps ought to look at whatever information we can get with regard to the impact of this type of legislation elsewhere.

Ms Best: We've provided you with all the information we have. The only other additional fact I can assist you with is that we understand the rate of unionization in Quebec to be higher than it is in Ontario. Therefore, it might be more likely that due to that there were more strikes in Quebec. I don't have any further information than what we've provided you with.

Mrs Cunningham: I was interested too that you made some suggestions around the domestic workers. I wonder if you'd like to speak to us in that regard now.

Ms Best: The point we were making when we spoke about domestic workers was that the act requires there be more than one employee at a workplace before these employees can organize. It serves to contradict the amendment, which includes domestic workers, because many domestic workers work in a single home by themselves. We're not sure how the amendments to the act can in any way assist those people.

Mrs Cunningham: I tend to agree with you. It won't be particularly helpful. It's a separate issue. It's something that's going to have to be given a lot of thought.

Mr Jackson: This is a bit of a different question, but since your organization represents 6,000 workers, I would assume that about 80% of those are women workers in this province?

Ms Best: Yes, sir.

Mr Jackson: Is it about 80%? That was a guess.

Ms Best: It was a good one.

Mr Jackson: When the Labour Relations Act is opened, it is deemed to be opened in all areas and therefore any political party can make amendments. One of the areas that's of concern to me is this very difficult area of workplace sexual harassment. Why I raise that is I have heard from women who don't feel they're well served by their unions when there are harassment cases.

Given that you represent such a predominant number of women workers in a field where there has been considerable exposure to the issues of workplace sexual harassment, would you support clearly defined language in the legislation setting out rules, so that a union is not put in a position of bargaining the dismissal of an employee who may or may not have been guilty of sexual harassment? We are currently considering it in several organizations that have bargaining units or are organized in a professional fashion. I think it's fair that all citizens in their workplace be given that protection, but quite frankly, in Ontario I don't think women enjoy the kind of level of protection they deserve.

Ms Best: Are you talking about amendments to the Labour Relations Act that would deal with the question—

Mr Jackson: Right now, it's under a grievance, and it's a grey area whether or not the police should come in. But there are cases where women have not received the

support when they go to the union with their complaint. Then they go to management and it becomes a labour issue. It should never be a labour issue; it's a common assault issue. I know you're familiar with this, within your own organization, because it's been discussed extensively.

Ms Best: Obviously, we would support anything that would assist in stopping sexual harassment. Of course, we would have to see the amendments before we could make a broad statement but we would certainly like to see harassment in the workplace stopped.

Mr Jackson: And offenders removed from the workplace; that's the principle we're looking for.

Ms Best: It does present a problem for trade unions with the worker versus worker. I don't think anyone has the magic answer to that. It would take a lot of study and discussion to come up with the formula to deal with that.

Mr Ferguson: I'd like to turn to page 20 in your submission, regarding petitions. We've heard from a number of groups so far today and almost everybody has touched on the whole question of petitions. Some are of the view, of course, that a petition is nothing more than a subtle form of intimidation whereby, once the employees start signing union cards, the employer then comes out with a petition.

If your name isn't on the petition, if you don't sign it, then the employer can take further action at a later date. That's one suggestion that's been advanced. The other is that if an employee does not sign the petition, then of course the employer may use other forms of intimidation against the employee.

The second part of that, which has been suggested a number of times, is that when working people are in the middle of an organizing drive, the reason they should have the second chance through a petition is because they really don't understand what they're doing. That suggestion has been advanced as well, although I don't think anybody's put it as direct as that.

Do you have any further comments on the whole petition process? Perhaps you could tell the committee some of the real difficulties you've experienced personally in the presentation of petitions.

Ms Best: On the question of petitions, first of all, I believe the working men and women in this province, when they decide to join a union, ought to be able to do so without interference. I believe that when they make the decision to join a trade union it's a well-thought-out decision. The people I've met with—and I've worked for this organization for 16 years and met many people in organizing drives—they ask the questions, they get the answers and they understand the issues before they sign cards.

My experience with petitions has been that it gives the employer an opportunity—we know there are employers who do it; all we have to do is read the decisions of the labour relations board. There are employers who intimidate their employees, who make illegal threats and do illegal things. Petitions give employers an opportunity to terrorize people, not into changing their minds but into saying that they changed their minds because they're so frightened. Petitions should be done away with completely.

Mr Ferguson: Would you agree it would be something like people voting in a general election and then, not liking the results, wanting a second opportunity to make a decision?

Mrs Cunningham: Like now?

Ms Best: There always is a second opportunity. The Labour Relations Act currently provides and will continue to provide that people who no longer wish to be represented by a trade union can do so. If that's the case, the mechanics are there for them to do it, and by the way, it's only 50% plus one for them to get out of the union.

The Vice-Chair: Ms Murdock, two minutes.

Ms Murdock: I just want to go through the whole certification process in terms of your workers being predominantly women. What percentage would be part-time and what percentage full-time?

Ms Best: I think probably 70% full-time and 30% part-time.

Ms Murdock: In terms of your organizing and in response to one of the earlier questions, you said you see no difference between the two. Has there been a difference in terms of getting them organized?

Ms Best: No. In fact, under the existing legislation, where there are two bargaining units, you apply for two certificates. Generally, as far as I can remember, the support has been there within both groups, so you could either get one certificate covering both of them if the employer agreed or separate certificates covering the full-time employees and the part-time employees.

There is a desire among part-time employees to be represented because I think they're the most abused portion of the workforce right now. They're not getting many of the benefits that traditionally organized workers are. There's a desire there.

Ms Murdock: In terms of the certification—it hasn't been asked today and I'm somewhat surprised. It was mentioned last week a number of times about a secret ballot certification vote and how that would operate. Could I have your views on that and your reasons for your answer?

1530

Ms Best: I think that's regressive; it's not improving the act. People have signed their membership cards and indicated they want to be represented by a union. I'm still of the view that when they did that, they knew what they were doing at the time. I see no need to have a secret ballot vote. If we do that, it only opens up another door for those employers who will use intimidation tactics to sway people, to change their minds for the wrong reasons.

The Vice-Chair: Thank you very much. I appreciate the time you've taken to appear before the committee today, and I think you should know you've played a very important role in the entire process. We hope you'll keep in touch with the committee, either through an MPP on the committee or through the clerk, as the legislation proceeds through the process. Thank you very much for appearing today.

CANADIAN DAILY NEWSPAPER ASSOCIATION

The Vice-Chair: The next witnesses scheduled are from the Canadian Daily Newspaper Association. Please come forward and find a microphone, identify yourselves for Hansard and proceed with your presentation. I should remind you that you have half an hour; try to keep at least 15 minutes of that for questions from the committee.

Mr John Foy: My name is John Foy, and I'm the president of the Canadian Daily Newspaper Association. I'd like to begin by introducing my four colleagues who are now participating in our presentation this afternoon. Mr Orval McGuire is chairman of the Canadian Daily Newspaper Association's human resources committee and director of industrial relations for Southam Newspaper Group. Michael Doody is legal counsel and corporate secretary for Thomson Newspapers Corp. Diane Barsoski is vice-president of human resources at the Globe and Mail and Chris Davies is director of industrial relations for the Toronto Star.

As our background material points out, we represent 84 daily newspapers in Canada; 38 of the 44 daily newspapers in Ontario are members of our association and employ just under 12,000 people on a full- and part-time basis. It is significant that 47% of our employees are union members, compared to the approximately 31% of the overall Ontario workforce and the 19% in the private sector who are unionized.

We're pleased to have this opportunity to discuss Bill 40. Like so many other groups, we welcomed the modifications that followed the white paper. However, we are strongly opposed to seeing the proposed legislation go ahead in its present form. In our view, the newspaper industry will be especially hard hit, but even more important, the overall economy of this province will be put seriously at risk at a time when there is hardly an individual or family or enterprise that isn't suffering from the recession. Mr McGuire will elaborate on this.

Mr Orval McGuire: By now you've heard many groups warn you about how they and the overall economy will be seriously threatened in this proposed legislation. We won't attempt to repeat all those facts and figures, but we feel a responsibility to remind you that our product is different from others. In the case of newspapers, there is far more at stake than just the bottom line or even the welfare of the men and women and their families who depend on us for jobs.

As politicians, you will recognize that newspapers are more than just a product; they're a vital part of our communities and people depend upon them. Many of our newspapers are older than Canada itself and take very seriously their role in being good neighbours, good corporate citizens and participants in the economic and social well-being of this country and its future.

Ladies and gentlemen, we cannot emphasize too strongly that you're studying a piece of legislation that has great potential for crippling and putting out of business members of an industry that is an integral part of the fabric of this country and this province. It's an industry that's already struggling to survive in the face of rising costs,

competing technologies, shifts in advertising trends, changing lifestyles, demographics and illiteracy. This legislation could well be the proverbial straw, in many cases.

The proposed limit on the use of replacement workers during a strike would make it almost impossible to publish, and a paper which is not publishing is one which is in peril. This is especially true of the vast majority of dailies located in smaller and medium-sized centres. Quite simply, newspapers cannot stockpile news. Frustrated readers either turn to other sources of print information or to electronic media, and in some cases just give up. It is costly and often impossible to reclaim lost readers and advertisers.

As the president of Southam newspapers told you on Thursday, the Sault Star is now on strike but continuing to publish. This means that those who want to continue to work can do so, and strikers will have a job to return to once the strike is over. No one gains when a paper closes, and we're saying to you that the real losers are not just its employees and their families, but the community itself: the readers, consumers, organizations, business people and everybody else.

Michael Doody has some further comments along these lines.

Mr Michael Doody: It's important to keep in mind that our association represents newspapers of all sizes, but they share a common commitment to their communities. With specific reference to Thomson Newspapers, we publish 22 dailies in Ontario in addition to the Globe and Mail. Overall, the average circulation of these 22, in addition to the Globe, is 16,000.

I believe the daily's role in smaller Ontario centres is particularly significant, because local residents depend upon it for their primary sources of information about what is happening in their community. The local daily newspaper in this province provides people in small cities and towns with really the only means of knowing what goes on in the community. Radio and TV do not do it; their coverage is too spotty. Metropolitan newspapers that are distributed in smaller centres do not do it; their concentration is on international, national and regional news.

The local daily provides its community with everything from notices on births and deaths to recreational and social activities, activities of local schools, coverage of municipal government and police, discussion of what local businesses are providing what jobs in town and the expression of local opinion through the "letters to the editor" pages. If a local daily folds, some of its advertising will flow to print competition such as direct mail or a shopper, but it's important to recognize that neither of these kinds of publications will replace the daily as far as editorial content and tradition are concerned.

Ladies and gentlemen, to us it is bitterly ironic that we are dealing today with legislation which could have the effect of closing union newspapers, to the great benefit of non-union print and electronic competitors who share neither the will nor the ability to provide the same service to their community. To us, that is not only bad business; it's also bad public policy that is in the long-term best interests of no one in this province.

Diane Barsoski will now discuss the legislation in relation to the business community.

Ms Diane Barsoski: At the outset of our presentation, John Foy referred to this legislation's adverse effects on the province-wide economy, and I'd like to elaborate on this a bit.

We read our newspapers and we're very aware that some members of the provincial government believe business is overreacting to this bill and its effects. To us, this suggestion warrants a serious response. The indisputable fact is that the bill as it now stands will make it very difficult for some businesses to operate during a strike, and impossible for others; this is its objective.

If the employer can operate during a strike, we still may have some semblance of a balance of power in those negotiations. However, a lot of money will be spent preparing for a possible strike, and the strike will be far more costly to the employer in an already tough economy. It's also significant that when a lot of money is spent preparing for a strike, it often results in entrenchment and inflexibility.

On the other hand, if the employer cannot operate during a strike, and must in order to survive, the employer will give in to union demands, even those which unaffordable. The company may survive if these costs can be passed on to the consumer—not the trend these days—if staffing can be reduced or if the employer can relocate. If these options don't exist, the company closes, and there are a lot of losers in the process.

To us, it is self-evident that this proposed legislation will be destructive to our economy. Like it or not, we believe the government has to recognize that the widespread and profound fear among the business community about this legislation can only cause immeasurable harm. Consumer and investor confidence is being shaken by the public discussions of this legislation at the very time when what we need to be doing is restoring confidence. No matter how you dress it up, the reality is that the legislation provides an unfair and unequal advantage to labour and does not improve labour-management relations.

The government's attempt to point out that somewhat similar legislation exists in Quebec provides little comfort. Federal and Quebec government statistics show the labour scene in our sister province has been no more harmonious than here in Ontario with that set of provisions. We should not be following Quebec's lead on this. A previous speaker indicated that under Quebec's legislation, the duration of strikes has decreased. This is exactly the opposite of the truth, and I'm happy to leave some statistics here with you.

1540

Our brief refers to our belief that labour relations are like a three-legged stool on which the rights of employers, employees and unions have to balance if they're going to work and support the economy. Bill 40 will destroy that balance. Bill 40 will extend the powers of unions over those of employers and employees, and the provincial economy will pay the price.

This is the message that has caused business people at home and abroad to make this legislation a serious factor in their decisions about where they will do business and how

much they are willing to invest in Ontario and its future. We believe the government has to view with the greatest alarm the perception that exists about this legislation, because as we know, perception in fact becomes reality. These perceptions are crafting investment decisions, and we're all going to pay a very high price for what is being said and believed about how business is treated in this province.

We believe with almost 600,000 people out of work in this province and business and consumer bankruptcies on the rise, Bill 40 is especially badly conceived.

Chris Davies will now offer his perspective on this issue.

Mr Chris Davies: I'd like to make my observations in the context of the recent strike at the Toronto Star by the Southern Ontario Newspaper Guild, which represents approximately 1,500 employees in a wide range of departments such as editorial, advertising, circulation and delivery.

We believe very strongly, based upon a substantial amount of industry experience both in Canada and elsewhere, that newspapers that cannot retain an effective presence in the marketplace during a work stoppage are going to be adversely affected in communities where substantial competition exists. Our competition, incidentally, does not just consist of other newspapers but of many other media such as television, radio, magazines, billboards, direct mail and so on. The fact that many of these other media are non-union or not subject to provincial legislation is, of course, one of the reasons we have great concern about these proposed amendments to the Ontario Labour Relations Act.

An uneven playing field is never a very comfortable place to be, and we believe Bill 40 will make our viability even more precarious.

In the aftermath of our very ugly strike in which a very substantial amount of property damage was caused by striking guild members, I have given a great deal of thought to many aspects of what occurred. In the first place, could we have operated if we had been attempting to do so under the amended act? In the second place, what might some of the consequences have been had we not been able to operate at all?

The answer to the first question is that I believe we could have produced and distributed a limited paper, but this is because of the financial and human resources available to us due to our size and because six other bargaining units were on the job. However, as a result of this experience, I am convinced that many smaller papers without such resources would have enormous difficulty in publishing.

In our case, under the new law, I do not believe we could have been as effective as we were in terms of the quality and quantity of the newspapers distributed, but we could have retained some presence in the community. There would of course have been a greater loss of permanent revenue and a greater loss of readership, and in the long run, this may have proven fatal, but we would have had no choice but to try.

On the issue of violence involved in the attempted prevention of vehicles coming out of our production facilities and at distribution depots, I believe it made no difference

to guild pickets whether the drivers were replacement workers or management personnel. In my view, the union would have made a concerted effort to stop distribution of the product no matter what.

What the no-replacement-worker legislation would do of course would be to make it considerably more difficult for a limited number of managerial and non-union employees to keep a business operating, and operate it must if it wants to survive, especially in our industry.

Far from achieving more harmonious labour relations, it's my belief that this proposed legislation will foster acrimony and increased labour-management friction as newspapers such as the *Star* struggle to compete with non-union competitors in the electronic media.

For purposes of this discussion, let's suppose the *Star* had been operating under the provisions of Bill 40 and had not been able to publish. The employees represented within the six other non-striking bargaining units would have been unable to work and would have been without pay or benefits, as would most managerial and non-union staff. The impact of that in terms of taking dollars out of the economy would have exceeded \$1 million per week. Adult carriers and others responsible for distribution and our suppliers would also have been losers in this scenario to the tune of an additional \$1 million plus per week. Our advertisers would have incurred considerable losses as well due to not having access to a mass distribution vehicle such as the *Star*. The damage to the *Toronto Star*, if we had been prevented from publishing for any significant length of time, would have been very serious in terms of market share loss and how many jobs we would have been able to provide when it was all over. So not much good would have come out of shutting down the paper.

There is the other alternative, of course. The company could've caved in to union demands. It could've given the guild the increased money and job security it demanded, and this would've meant going to the six other bargaining units and offering them the same, even though their members, or their union leaders, had already agreed to recommend a settlement which did not include that kind of money or those kinds of job security provisions. I can only tell you that in our competitive field and in these economic times, that kind of practice would almost certainly put us out of business eventually.

I am prejudiced, but I do not believe that putting the century-old *Toronto Star* out of business is in anyone's best interests—not the employees', not the unions' and certainly not this community's, possibly not even this country's. But in the opinion of the Canadian Daily Newspaper Association, this is the kind of stark reality we will be facing if Bill 40 becomes law in its present form.

Mr McGuire will now conclude on our behalf.

Mr McGuire: This concludes our presentation. We thank you for your attention and we would urge you to read the background material we have provided. We would now welcome whatever questions you might have of us.

The Chair: Thank you. Mrs Cunningham, three and a half minutes, please.

Mrs Cunningham: Three and a half?

The Chair: Yes, ma'am.

Mrs Cunningham: All right.

Mr Jackson: On a point of order, Mr Chair: Are we not doing a regular rotation? You're always starting on this side.

The Chair: We're doing a pure rotation, which is fair to every single caucus.

Mr Jackson: That's encouraging to hear.

Mrs Cunningham: Obviously my question is going to be along the line of questioning I'm trying to pursue today, because there have been some interesting briefs and a lot of work has gone into them, but I guess my great concern is when we do get information that I don't feel, given the kind of homework I've done, is correct. I think that was referred to by Ms Barsoski.

Mr Davies: Yes.

Mrs Cunningham: We're looking at the length of strikes being longer where in fact there are replacement workers allowed. I think that was what was said previously. It isn't the information I have, and I guess you said you could clarify it and I'd like it on the record.

Ms Barsoski: Our source is the Quebec Ministry of Labour, and we have data from 1976 all the way through to 1990. I have a column here that has average duration of workdays of the strike. Do you want me to read them down? It starts with 39.4 in 1976, 35.9, 32.7, 32.8, 34.1, 40.6, 43.6, 45.4, 33, 37.4, 35.1, 38.6, 41.8, 38.1, 47.5, culminating in 1990. I'd certainly be happy to leave this.

Mrs Cunningham: I think the committee would like to take a look at that, and I thank you for it.

I was going to ask, and perhaps one of the presenters could respond to this, has there been any work done in this regard with respect to the continuance of businesses to operate where there has been a stoppage in a workplace where there has been the opportunity to replace workers versus where they haven't replaced workers? That happens now in Ontario. I'm just wondering if anybody knows anything about that. Who has any information for the committee with regard to whether these businesses that have already stopped working because of a strike—small businesses, large businesses—where they're out permanently or where they recuperate and can operate again? Is there information that any of you know about?

Mr McGuire: I can speak generally to the Montreal *Star*, which went out of business, and the Ottawa *Journal*, which went out of business, both following major strikes in which they continued to publish, but not nearly as well and at great expense. When they came back they found that the majority of readers and advertisers had gone to their competitors and neither was able to continue. Those are the two Canadian media ones. In the United States, there is a long history of newspapers unable to publish never coming back. As we can see in Canada, we have far fewer dailies today than we had even 15 years ago. Some are labour-related, of course, and some aren't. I'm not suggesting every one of them was because of a labour difficulty.

1550

Mrs Cunningham: With regard to replacement workers, would most of these newspapers not have had that particular union operating with replacement workers?

Mr McGuire: I'm sorry, I missed the opening.

Mrs Cunningham: With regard to replacement workers—and you're talking about newspapers—do you know whether those newspapers would have been operating or ceased to operate because they weren't allowed to have replacement workers? Is that the kind of information we can get from the newspaper business?

Mr McGuire: I don't know what source we would go to. I don't know if anyone has tracked that.

Mrs Cunningham: It might be difficult.

Ms Barsoski: We could certainly ask. There are many people who have been in this business for a long time. If you want us to look into that we could certainly do it.

Mrs Cunningham: Perhaps it would be fair for us to get in touch with you later and ask that question in the broader sense, and ask the research person to add to the information I've already asked for.

The Chair: Research has already indicated that it has broadened its scope in terms of its investigation.

Mr Fletcher: I have a couple of questions, first as far as Quebec and its legislation is concerned. A few years ago the Montreal Gazette was on strike and it continued to publish, and even after the strike things came back to normal. Notwithstanding their anti-replacement worker legislation, they continued to work through that without having to go to the government saying, "Hey, get rid of this piece of legislation; it's harming us." In effect, it did harm them to publish a smaller paper and everything else, but they continued to work even with that legislation in place. Can you not see—

Mr McGuire: I'm sorry, what is the question?

Mr Fletcher: I was just getting to it. Can you not see the same happening in Ontario where you will continue to be able to publish?

Mr McGuire: No, sir, because this legislation is far more restrictive than Quebec's, for openers. We own the Montreal Gazette, so I can speak to it. I was there. There was more violence, I believe, than has ever been seen in a Canadian newspaper strike, in the first two days, until the police finally cleared out the problem.

They had legislation which required people to be on staff well before the strike began, and they were able to publish using some of those people and of course some of the kinds of employees who would be allowed under this proposed legislation. But not everybody was out, by a long shot. There were only the press men and the mailers out. I think it's important to understand that newspapers are multi-union. The Toronto Star has seven or eight unions. Most big newspapers have five, six, seven unions. Smaller ones have three or four.

In the Montreal Gazette, one union was out with two areas and all the others continued to work. The Toronto Star was the same proposition. One union was out, albeit the largest by a long shot—

Mr Fletcher: I beg to differ with you about the strength of their law versus this one, but let me get on to another question, because my time is limited also. The one thing is that as far as the Guelph Daily Mercury is concerned, it just went to a Sunday newspaper. Its carriers, who for religious reasons didn't want to work on a Sunday, were told, "You either deliver the paper on Sunday or you quit; you get rid of your job." If that's the way you're going to treat the carriers, how can we expect that you're going to be—

Mr Jackson: It's the way your government's treating Sunday legislation, Mr Fletcher.

The Chair: Go ahead, Mr Fletcher.

Mr Fletcher: How can we expect the rest of the people working within the newspaper are going to be treated any more fairly? "If you don't want to do it, then quit." This is children; we're talking children who are carriers.

Mr McGuire: I think there's a very simple answer. We can expect them to be treated well because they have always been treated well. We are a very high-pay industry. Our benefit coverage is second to none in almost any city you go to. Whether a newspaper required the carriers to deliver the paper on Sunday—otherwise, how would you get the Sunday paper on the street? I don't think that's got anything to do with labour legislation, with great respect.

Mr Offer: Thank you for your presentation. There are two areas I'd like to deal with. Obviously one is the replacement worker, but before that, in your presentation you spoke about the 60% strike vote. I'm not clear on your position because, of course, there is the need for a 60% strike vote in order for the prohibition on replacement workers to kick in. I would like to get an idea of your position as to whether you have a concern with that which surrounds the 60% strike vote in terms of its prohibition on replacement, or do you have a concern fundamentally with replacement workers? I think I would just like to be very clear on your position on that.

Mr McGuire: I think the answer is both. First of all, the legislation will require 60% of people, but it's only of those voting. In our experience, about 40% of the membership shows up and if 60% of them vote to strike, that's now 24% of the whole group and that's who leads the people out on the street. But certainly, above all, our replacement worker is our primary concern. If we had to pin it down to one, in the small papers, as the brief said, we cannot possibly continue to operate very long with very few exclusions because the Ontario Labour Relations Board has not been big on allowing a lot of exclusions on the management side.

Mr Offer: Thank you. I appreciate the concern. Would your concern on the issue of the 60% strike vote be eliminated—if not eliminated, alleviated—if there was a requirement that a certain percentage of employees had to cast a vote and, second, that there was a definite time period, let us say very close to the actual strike date, where the vote had to be cast? Of course, what we're hearing many times, as you indicated earlier, is that there is not a large percentage of employees who cast the vote and that the strike vote is cast very early on in the bargaining. On

that basis I'm wondering if your concerns might be alleviated if that were changed in the legislation.

Mr McGuire: At the very least we would hope and expect that the union would have to take the company's last offer back for a secret ballot prior to a strike. At the moment it's a show of hands, or can be. It need not be supervised by government or any other agency. There are other provinces which require supervised strike votes by the ministry right up near the strike deadline, not take the vote in June and strike in December suddenly when the membership has forgotten about it.

Mr Doody: Our concern is not just a procedural one; it's a fundamental one as well.

Ms Barsoski: If I can add one thing to that—this, taken together with, of course, the prohibition against crossing picket lines and with what appears to us to be amalgamation of bargaining units on request by the union, becomes very interesting. For example, in our shop one union has about 250; four other units combined do not have 250 members. Therefore, if there was automatic amalgamation of the bargaining units without any concern about other employees' wishes, that one majority would call all the shots.

The Chair: Thank you. The committee wants to express its gratitude to the Canadian Daily Newspaper Association for coming here and participating in this process. I trust you'll be keeping an eye on the committee as it deals with the bill and on the Legislature subsequently. I encourage you to keep in touch with the members or the committee itself. Thank you, people. Take care.

1600

ONTARIO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION

The Chair: The next participant is the Ontario Sewer and Watermain Contractors Association. Please come forward, those people representing that association, seat yourselves at a mike, let us know who you are and what your titles are with the association. Try to save at least the last 15 minutes of your half-hour for dialogue and exchanges; that is, as you can see, one of the more interesting parts of these presentations. Go ahead, sir.

Mr Michael Poce: Mr Chairman and committee members, my name is Michael Poce. I'm the past president and a director of the Ontario Sewer and Watermain Contractors Association and I'm the owner of Poce Construction Ltd, a sewer and watermain contractor based in Toronto. I am accompanied this afternoon by our executive director, Sandy Cochrane, who may assist me in answering some of your questions.

Our industry is very labour-intensive, highly unionized and badly crippled by the current recession. Up to 50 cents of every dollar spent on our projects goes directly to labour costs. When our industry is busy, which it last was in 1989, we are significant employers. But the number of hours worked in our industry in the first three months of this year was down 65% from the same period in 1989. For the full year we expect the volume of work in our sector to be only half of what it was in 1989, a drop of some \$500 million.

The impact of this decline on workers in our industry is devastating: They will lose about \$250 million in wages this year compared to what they made in 1989. At an average annual wage of \$40,000, that's an equivalent of 6,250 jobs. In less than three years there have been more jobs lost in our industry than exist in all of Moore township, adjacent to Mr Huget's riding, or in the towns of Goderich and Clinton combined, in Mr Klopp's riding, or in the town of Nickel Centre, adjacent to Ms Murdock's riding, or in the town of Kapuskasing, in Mr Wood's riding. Mr Chairman, there have been almost as many jobs lost in our industry since 1989 as exist in the town of Thorold, in your riding.

Our industry is hurting badly. The workers in our industry are hurting badly. Recovery in our industry will depend entirely on increasing the rate of new investment by both the public and private sectors.

Approximately 50% of the work in our industry is funded by public sector investment, mostly for the renovation, repair or extension of municipal infrastructure. The Treasurer has made it clear that we should not anticipate any relief from public sector investment in the short term. In fact, Mr Laughren's budget this year calls for a \$56-million cut in capital transfers to municipalities for water and sewer projects and reduces the Minister of the Environment's capital budget by a further \$49 million.

Therefore, the only way to get workers in our industry back on the job is through increased investment by the private sector in the residential, commercial and industrial projects that comprise the other half of our business.

There is no higher priority for the people of our industry, whether they are owners or employees, whether they are unionized or not, than increasing the volume of work and reducing the tragically high level of unemployment among construction workers. When we look at Bill 40, we're looking at its impact on investment and jobs in our industry in the midst of this cruel recession. What we see is truly frightening.

All members of the Legislature have heard the argument many times that Bill 40 will cause investment and jobs to be lost in Ontario. Some of you may wonder why the same argument is being repeated over and over; surely the point has been made. Yet it appears that, for government members at least, the point has not been made; otherwise this legislation would have been withdrawn. Frankly, many of us in the private sector do not understand why the supporters of this bill seem not to care about its economic consequences.

I can only conclude that some members of this Legislature simply do not believe this legislation will significantly damage job and investment prospects in Ontario. They don't believe the economic impact studies. They don't believe the poll results. They don't believe what business owners in their own ridings tell them. They don't believe what investors in the Far East say to the Premier or what auto industry suppliers in Michigan say to the Ministry of Labour officials. The message has been remarkably consistent, yet it is repeatedly dismissed, ridiculed or ignored by spokespeople for the NDP and the Ontario Federation of Labour.

Yet here I am, making this argument about jobs and investment to you again. Why? Because I believe that if you can be convinced that the argument is true, and not just political posturing or a negotiating ploy, then you will not let this bill become law. I believe even the most ideologically committed members will back away from a measure that would cause enormous hardship to their constituents and to workers and business owners throughout Ontario.

How can I convince you that the threat to jobs posed by this legislation is real and significant? The stories of potential investors who have backed away from Ontario because of this legislation are heard often by those of us who move in business circles. It is unfortunate that not a single member of the present Ontario government is part of that circuit. The source of these stories is often a lawyer who practices in commercial law or an accountant or merchant banker who is involved in new business ventures. For a variety of valid reasons, the potential investor's identity is seldom revealed, but the stories are clearly real.

I most recently heard one such story only last Friday. It comes from a lawyer who was working with the owners of a large, US-based hardware supply business. This business supplies many hardware retailers in Canada with products imported from the United States. The owners found, however, that Canadian customs procedures are cumbersome, so they decided to establish a distribution centre in the greater Toronto area. The new facility was to employ 24 full-time employees. With this new Canadian base, the company also intended to start buying product made in Canada for its Canadian distribution network.

The president of this business came to Toronto recently for a week of meetings and research. He spent time looking for a suitable site for the new distribution centre and found more than one. He had satisfactory meetings with potential Canadian suppliers and other prospective partners. He was briefed about the tax system in this country and many other relevant matters. Then he was told about the labour law changes that are incorporated in Bill 40, and he said in effect: "That makes up my mind. We're not going ahead with this project."

There are many similar stories. The bottom line in all of them is that potential investors decided to stay out of Ontario because they see this legislation as the most glaring evidence of this government's anti-business attitude. In the case I cited, Ontario lost investment, construction activity and permanent jobs, and Ontario and the rest of Canada lost new supplier opportunities.

Who wins? Do Ontario workers win when jobs go somewhere else? Of course not. In fact, those who are hurt most when investment and jobs disappear are the unskilled, the single mothers, the new Canadians and other vulnerable workers who are said to be the beneficiaries of this bill. This legislation will do nothing for those people who cannot get work.

We in the construction industry have focused most of our research and comments about labour law reform on the issue of its economic impact. We have done so because our industry can survive only if people and companies choose to invest in Ontario. Our industry is in trouble because capital

investment in Ontario has been dropping for the past two years. Capital investment in all construction in Ontario was down 6.8% in 1990 and by 11.2% last year. It is forecast to drop another 1.8% this year. That's a \$4.2-billion decline in construction spending in Ontario since 1990.

A more detailed look at Statistics Canada's construction investment numbers shows that Ontario's position is deteriorating much faster than in the rest of the country. We have looked at private and institutional investment trends and 1992 investment intentions for the industrial, commercial and institutional construction sectors. What we have found is disturbing. Construction investment intentions in Ontario in 1992 are down 15.1%, or \$2.4 billion, from actual spending in 1990. That rate of decline is three times faster than in the rest of Canada, which faces a 4.7% drop. In Quebec, the province whose economic structure is closest to Ontario's, the decline in construction investment is only 5.5%.

There are many more statistics that tell basically the same story. The simple truth is this: The investment dollars that create jobs and sustain our industry are leaving Ontario at an alarmingly fast rate.

All of us who care about the economic wellbeing of this province have to ask ourselves, why is Ontario losing investment three times faster than the rest of the country? All of Canada has been affected by the same monetary policy, the same interest rates, the same free trade agreement. All of Canada has had to deal with the negative investment effect of a threatened breakup of the country. What's been different here since 1990? What unique factor is causing investors to abandon Ontario?

1610

The answer, unfortunately, is obvious. We have a government in this province that makes no secret of its distrust of, and dislike for, the private sector. For almost two years this government's anti-business attitude has been on display, and nowhere more clearly than in these proposed labour law changes. The people from Ontario and elsewhere who create jobs by investing money in buildings and equipment have looked at this legislation and said: "We're not investing in any jurisdiction that has labour laws like those proposed in Bill 40. The environment for our business is friendlier in New York or Michigan or New Brunswick or even in Quebec." If Bill 40 or its equivalent were passed in all these jurisdictions, we would all be on a level playing field. But legislation like this is not even being considered by any of our North American competitors.

We have all heard about the economic impact study completed earlier this year by Ernst and Young for the construction industry. I would like to add to the information provided to the committee about that study last week when the Council of Ontario Construction Associations appeared. The study consisted of interviews of 301 randomly selected senior executives, the people who make investment decisions, including 50 senior executives of large North American firms, most of which have no significant presence in Ontario.

It has been suggested that the answers of Ontario-based respondents may have been coloured because of their

desire to defeat this legislation and/or the NDP government. Let's just look at the responses of non-Ontarians.

When those out-of-province decision-makers were interviewed, they were not told that the jurisdiction under study was Ontario. Nine provisions of the proposed legislation, all of which are included in Bill 40, were described to them in a balanced and reasonably thorough way. As much as possible our industry wanted to get an honest and accurate reading of potential investors' opinions about the proposed labour legislation. These 50 interviews were intended to serve in part as a check on the potential biases of the Ontario-based respondents.

Sixty-eight per cent of those non-Ontarian firms, who obviously cannot be accused of having ulterior motives for defeating either this legislation or the present Ontario government, said that operating in any jurisdiction that adopted the pro-labour law changes would seriously weaken their ability to compete. Another 22% said that their ability to compete would be slightly weakened. That is a non-partisan and objective judgement passed by potential investors on this legislation—90% of them say it will weaken their ability to compete. These are the people who will decide whether their companies invest here in Ontario or someplace else.

Incidentally, Ontario-based respondents were slightly less negative, not more, about the impact of the proposed changes. Only 85% thought that their ability to compete would be weakened. Seventy-three per cent of the Ontario firms said that the proposed changes would cause job losses because they would become less labour-intensive, scale down or move some operations out of Ontario. Collectively, they forecast an apparently modest workforce reduction of approximately 8%. But on a province-wide basis, that would translate into 295,000 lost jobs.

If you've been told that the Ernst and Young study is biased or hysterical or political propaganda, perhaps you should read it carefully before you begin to write this committee's report. And if you're still not convinced that the price of this legislation in terms of lost investment and lost jobs is unacceptably high, then we urge this committee to undertake its own economic impact study.

The government has declined to commission an economic impact study, but that does not prevent this legislative committee from getting the facts for itself. You should know what the consequences of this legislation are before you recommend that it be adopted. If the Ernst and Young study is right or even half right, do you really want to support a bill that would eliminate, say, 150,000 jobs, an average of more than 1,100 in every riding in Ontario? Is that what your constituents wanted? Is that what you were elected to do? Of course not. Labour law reform was never even mentioned during the last election campaign, and every public opinion poll shows that the major provisions of this bill are strongly opposed by the people of Ontario.

This afternoon I have not directed the committee's attention to the specific aspects of Bill 40 that create disincentives to investment and job creation. Many of the most offensive provisions were raised during COCA's presentation last week. I have instead focused on the fundamental flaw in this legislation: Its provisions collectively say to

investors that they are not welcome in Ontario; they say that this government is prepared to pass laws that benefit its friends and allies without even considering the economic impact on the province as a whole; they say that this government does not support the efforts of Ontario's businesses to be competitive in the North American marketplace.

On behalf of the Ontario Sewer and Watermain Contractors Association, I urge this committee to commission its own economic impact study of Bill 40 and to recommend that this legislation be significantly amended so that potential investors will again see Ontario as a good place to create jobs and do business.

Mr Paul Klopp (Huron): Thank you very much. That was an interesting brief. I am finding this very—

Mrs Cunningham: Uncomfortable.

Mr Klopp: No, I find it very interesting with numbers. I have seen a lot of reports, and as a farmer, as a business person, I always go by what someone's trying to sell me and then I go with the facts and just the facts. Then I make a decision and then I go from there—never just on perceptions.

Many people in my riding are small business people, individual owners who work with their staff and work with their people, and quite frankly I was one of those also. You work with your people well. I don't see where the legislation will affect that tomorrow morning.

With numbers, construction investment has dropped 15.1% in Ontario compared, as you pointed out, to Quebec. You made the statement somewhat to the effect that that's comparable to us and they would never have a Bill 40. Yet many of the discussions that I've seen here today, the main contentious issue is they draw it to Quebec, and our lines in this particular bill are working with the worker protection. They actually have basically what we have here and yet you're saying quite the opposite. Could you explain this to me?

Mr R. W. A. Cochrane: What we see in the situation in Quebec is dramatically different than what's being proposed here in Bill 40, because what you have been looking at mainly has been the replacement worker aspect of what is now law in Quebec. The other components that are in this bill, as far as we are aware, are not effective in legislation in Quebec. That's the main difference.

Mr Klopp: But yet in fact we have in this country, in this province, many companies investing. The fact is that we have everyone from Ford to Sears, many companies, making investments as we speak and in fact continuously in my riding also. So we talk about the whole issue and the fear and all that that goes out with this. On the one hand you say it's driving investment away and yet the fact is, investment is coming here just as well as anyplace else considering the economic times worldwide.

Mr Puce: I don't think investment is coming here. We stated that the construction industry in the last few years has lost \$4.2 billion of investment.

If I take my firm for an example, two years ago I employed over 60 people; today I employ 8 people. We've shut our shop staff down to zero, we've cut our office staff in half, because there's not the work out there to keep our—

Mr Klopp: Because of this legislation?

Mr Huget: Thank you for your presentation. I only have one brief point. It's my understanding from Statistics Canada that over 50%—in fact, about 54%—of offshore investment in Canada in 1991-92 ended up in Ontario, and I think that's a significant number. More than half of offshore investment in Canada still came here to Ontario. There's the issue of Ford Motor Co. Others have mentioned there are other substantial investments taking place in terms of major dollars and major jobs in the province of Ontario.

You state in your presentation that you had been talking to some corporate executives, I guess, who felt that their competitiveness would be weakened. What was the basis of that fear of being weakened? In other words, what I'm trying to determine is: Precisely why would legislation, for example, that makes it easier for workers to organize, if they so choose, weaken a competitive position?

Mr Cochrane: I guess you have to make an assumption in asking your question and that is that it is not easy for workers to organize in Ontario today, and we do not believe that's the case. If that were so, then you possibly would have a point to make, but workers organize in Ontario as they wish to organize. The unions have been active in this province for many, many years and the level of organization is whatever it is; we believe it's somewhere in the vicinity of 20% across the whole of industry. In our particular sector it's somewhere between 35% and 40% and in the construction industry as a whole, around 40%.

There is every opportunity for very well organized unions which have been active here in this province for years and years to increase their membership, but what we have found through the studies we've done is that the majority of workers in Ontario do not want to be members of unions.

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Mr Huget: That's the basis of my question, sir. If that's the case, how is organizational ability going to impact on competitiveness? You state your industry is 40% organized. Does that mean, sir, that your industry is not competitive?

Mr Cochrane: Our industry has been probably growing less and less competitive in Ontario as a whole over the last several years, but we are particularly concerned about this bill. Of course you've had many, many representations from business as a whole, which is saying, "Don't do this because the risk is far too high."

But if you were to examine one point, for instance, which is the purpose clause which is being introduced, as opposed to a preamble which described how those who were officials at the Ontario Labour Relations Board should use the act. It gave them guidance as to how they should interpret the act. That kept the act on a balanced basis. If you're an employer or a member of a union, you felt that you had a reasonable chance of having a fair and balanced hearing. The purpose clause introduces the need for the board to concentrate on unionization. If you're an employer, if you're a member of an organization such as this one, who had a reason to go to the board to become accredited, which is the flip side of being certified, and you

go to a board which has a mandate for union organization, how in the world are we going to get any sort of a fair hearing on the need or desire to become accredited?

I think that's only one question which many manufacturers, many of those who are in business who may invest, ask themselves when they consider the question of investing in Ontario.

Mrs Joan M. Fawcett (Northumberland): Union bosses say the present legislation is not balanced, that it certainly is very much on the side of management. Then, of course, we hear a lot of people who say that it is quite balanced; maybe there can be some minor things done, but by and large it's a fairly good piece of legislation right now.

With the new Bill 40, could you just tell me which part of it will affect you the most in your particular business and what would be the kind of imbalance that you might see with Bill 40?

Mr Poce: I'm a union contractor; I have agreements with the labourers' union, the teamsters' union and the operating engineers in the province of Ontario. We've just gone through a one-week strike. We've just finished ratifying, both labour and management, our new three-year agreement. I guess the biggest concern I have is the replacement workers.

As a small company, if a strike was to take place, if I so desired, I could continue to operate with the people I have, supervisory staff etc. The way I read it under the new act I would have trouble operating in that way and it would put me in a much more difficult position in bargaining our collective agreement. Along with that we bargain, as Sandy said, as an accredited organization, which means that the entire sewer and watermain industry in board area 8 negotiates one collective agreement for all those contractors in that board area.

Mrs Fawcett: I can see where the smaller person is going to be really hurt. This is what I keep hearing in my office in Northumberland. They're the ones who are coming in really, very, very worried.

Mr Offer: Thank you for your presentation. I have just a short question. It really is almost to recap some of the things that we've heard since the hearings have commenced. Clearly people have been coming before the committee, some in favour, some with concerns. I think it's fair to indicate that it isn't just the business community that is coming here with concerns; the concerns with respect to the legislation are broader in scope.

My question to you is: Do you see that there is any need for change with respect to the Labour Relations Act at all? If so, how would you propose that be addressed?

Mr Poce: As management, I'd like to see it change the other way. I feel it's too onerous on me right now.

Mr Cochrane: The position we have taken is that Bill 40 in total is bad legislation if it goes into place and that it will have a very negative effect on the attitude of the average investor.

For example, an investor who may be going to make a product to ship into Canada has the option today to go to Michigan, to set up in Michigan and to build at costs, which we understand, based on our own studies, are less

than they are in Canada. As free trade develops, he can ship back into Canada with impunity. Moreover, he can move his product into other provinces in Canada, likewise with impunity. One of the things he has to look at when he comes to Ontario is that there are problems moving his product from Ontario into Quebec or other provinces in the country. That is a major concern.

I think if there really is a need to change the act—we don't believe there is, certainly not now in this particular time when we have a very serious recession, when we're entering into much more difficult competitive conditions as a result of broader trade bases—then owners, managers, employers, unions and employees should be called together to consider what are reasonable changes that need to be made. The government should act as a broker, if you like, to make sure that good legislation does go in place; that the government does not take a position in the corner with one or the other of the parties, but rather ensures that good legislation is enacted that will allow this province to be competitive and provide jobs for its population.

Mrs Cunningham: Thank you for your presentation. I thought it was interesting at the very beginning where you said that in spite of the economic impact studies, you couldn't believe that "the most ideologically committed member will back away from a measure that would cause enormous hardship to his or her constituents, to workers and business owners throughout Ontario."

I hope at the end of these hearings you will be correct, but I can tell you right now, just given the response by one of my colleagues in southwestern Ontario, Mr Klopp, I'm not sure that he understands the seriousness of this in his own riding. I'm absolutely positive he's heard many representations from the business community, because they've advised me that they've been there.

In southwestern Ontario, especially in London, where I represent the riding of London North—there are two other ridings plus the county of Middlesex—I can tell you that where individuals are not satisfied with the response from their representatives, they come to other people's ridings, and in London, Ontario, that happens to be myself. You can imagine how busy we are.

I can only say to some of my colleagues that one has to listen to all sides of this argument. The argument against this legislation, at least in my office, is probably about nine to one, and I truly listen to everybody who wants to be there. I can tell you that things will be different if the ideology prevails.

I'm looking towards your last recommendation here. With regard to their own economic impact studies—they don't believe anything they've heard so far; that's obvious. All you have to do is watch them in the House. Perhaps after these hearings—I'm sure they will be overwhelmingly against the legislation; it appears that way, the ones that we hear and especially the ones we're not able to hear—would you agree or be prepared to participate in a tripartite consultation or would you think that would be a good move for this committee to recommend, given what we hear, with regard to some specific changes to make the bill easier to live with for everybody? Do you think that would be a direction we should be going in? We have to

have a way of solving the problem without just passing these amendments. I'm looking for a solution here.

Mr Cochrane: Definitely, yes.

Mrs Cunningham: Do you know anything about it?

Mr Cochrane: About a tripartite committee?

Mrs Cunningham: Yes.

Mr Cochrane: We know nothing about one that is being proposed. What it means to us simply is that the parties sit down and examine the legislation that's in place, identify the need for change, and having done that, draft legislation that is going to correct whatever is wrong, having agreed that it is wrong; moreover, that the legislation that is put in place is going to protect the economy of this province.

If we don't do that, then we're not going to have to worry about who is going to get fair treatment at the Ontario Labour Relations Board. Nobody's going to be bothering to go if there are no jobs to be concerned about. That's our great concern, that this economy is going to further disintegrate. We must protect that at all costs.

Mrs Cunningham: It's certainly a process that we've been recommending.

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The Chair: You've given Mrs Cunningham your question, Mr Jackson?

Mr Jackson: I'm afraid you may rule that way, unless she'll allow me briefly to—

The Chair: You deal with Mrs Cunningham.

Mrs Cunningham: You'd better watch it there, Cam.

The Chair: It's between you and Mrs Cunningham. I'm indifferent.

Mr Jackson: Very briefly, people can't build new housing if they don't have sewer and watermain construction. Since 1988, the majority of new housing construction in this province has been done by the public sector, not the private sector, for rental housing. What that means is if your industry is crippled in any way, or your ability to perform in the public sector, we're looking at thousands of losses of new rental homes for Ontario residents.

Do you feel there should be an exemption in this legislation for any work associated with the public good, such as public sector housing, which would be devastated by this kind of legislation, when the penalty is paid not by these terrible owners of businesses or developers but by the taxpayers of Ontario who have to pay cost overruns for housing construction because of these delays? Would you like to comment on that observation?

Mr Cochrane: I'd say that if this bill becomes legislation, any exemption that is provided will only benefit the economy and the taxpayer.

The Chair: We want to thank you, Mr Poce, and you, Mr Cochrane, for your participation in this process. You've made a valuable contribution and we appreciate your coming here this afternoon. We trust you'll be keeping in touch.

ONTARIO COMMUNITY
NEWSPAPERS ASSOCIATION

The Chair: The next participant is the Ontario Community Newspapers Association, if their spokespeople would please come forward and seat themselves, tell us their names and titles, if any, and proceed with their comments. We've got half an hour. Please keep at least the last 15 minutes free for dialogue, exchanges and questions. Go ahead.

Mr Ken Bosveld: We've timed it, Mr Chairman, and it should work out that way. Good afternoon. My name is Ken Bosveld. I'm the first vice-president of the Ontario Community Newspapers Association. Mr Harry Stemp is our executive director. Mr Lorne Eedy is our president. Rick James is a director of our association.

We thank you for the opportunity to present our thoughts in the matter of proposed amendments and reforms of the Ontario Labour Relations Act.

The Ontario Community Newspapers Association represents 274 community newspapers with a total circulation of 2.7 million readers. Many of our members are locally owned weeklies.

I can tell you to begin with that you have brought our board together as never before. We can be a cantankerous, opinionated, independent group and we seldom agree on much of anything. On this matter, we are unanimous. We believe this is ill-advised legislation brought forward at a pivotal time in our history and dangerous to the economic renewal we so desperately require in this province.

The entire process is upside down. We are reduced, as small business people, and specifically as weekly newspaper publishers, to reacting to legislation we completely disagree with. Rather than being invited to be part of a process of examination, we're faced with a fait accompli that leaves us shaking our heads in disbelief. We feel painted into a corner, begging the government to reconsider its actions. We're forced to oppose. We find it an extremely negative experience.

We believe the rhetoric from both sides has been counter-productive. Business, which is scared to death and under tremendous economic assault from all sides, especially the south, has come out fighting like a rabid fox. Labour and government, on the other hand, accuse the business community of fear-mongering and spreading misinformation, yet they offer no specific answers or assurances. They seek to convince the public and especially our workers that businesses oppose these reforms because they seek to oppress their employees. That's an utter lie. Many businesses are simply trying to survive. It's not easy, and this law could make it even more difficult.

We abhor the time wasted in this war of nerves, when we should all be focused on the continued economic survival of this province, which has fallen so far so fast. It's our belief that if you want to change the rules of the road for a business, a community, a government, or for that matter, a family, you must consult all the stakeholders. If you do not, then whatever decisions transpire do not carry the legitimacy one needs to be successful.

The first, and one might argue the most important failure of this legislation is that it's actively opposed by virtually every business organization in the province. It's been

poisonous and debilitating to the working climate of the province.

We recommend that the province withdraw this legislation and bring together all the stakeholders and start again. The current ill will, mistrust and anger must be replaced by recognition by all parties that we need to come together and try to leave our politics at the door and consider these new rules of the road together.

We proceed, then, with our specific concerns about this legislation only under the strongest possible protest. It's the wrong venue and it's a negative process. It's a Band-Aid response which sets business, labour and government into defensive posturing which demeans all our efforts.

We specifically object to the provision in the legislation which effectively denies an individual the right to reconsider his or her opinion after he's decided to join a union. The provision that such a petition must occur before the union files its application with the board is a mockery of the freedom to choose. We find it peculiar that in the province of Ontario it will be easier to cancel a contract one has signed to buy a new condominium than to exercise the freedom to disentangle oneself from being sold a new union. It's a double standard and it's wrong.

We find it totally undemocratic that an employee could find himself or herself a member of a union without being given the opportunity to vote. No employee should ever arrive at work to discover he now belongs to a union which he did not vote in favour of joining. We consider this provision in the current legislation and in the proposed legislation to be a totally unacceptable violation of the most basic rights and freedoms.

Membership in a union, like that in a business or trade association, should be absolutely voluntary. Any employee is free to exercise his right of association and join a union, and any employee must also be 100% free to exercise his right of non-association. This right should also be protected through legislation.

No one should ever be forced to join a union in order to obtain or retain his job. In a truly free and democratic society, no job should be dependent upon union membership, no shop should be a closed shop, no individual should be denied the opportunity to support himself or his family because he's exercised his right of non-association.

We do not subscribe to the argument that eliminating the requirement to vote when 55% sign up as union members is the right way to expedite the process. Rather, we believe if something's worth doing, it's worth doing right. There are ways to expedite the certification process which do not carry such an unacceptably high potential for abuse, and furthermore we submit to the committee that as a matter of principle, a minimum or token certification fee be maintained.

In our opinion, the argument that reform of Ontario's labour laws will reduce picket line violence simply doesn't hold water. Existing laws are not being enforced or are being selectively enforced by choice. It's hogwash to say that new laws will solve the problem when from the government on down there's disrespect for the current laws. How can it be that behaviour is tolerated on a picket line when those same actions would result in instant arrest if

committed at a shopping centre, the ballpark or a hockey arena? Strikes should not be a legal opportunity for intimidation, vandalism or destruction.

However, our deepest concerns have to do with the banning of replacement workers. In conjunction with the omnipotent powers of labour relations boards to force a first contract, there's little pressure on a union bargaining committee to bargain in good faith. We're to be held hostage by unions many times our size.

The proposed legislation would instantly cripple a community newspaper. The ban against using replacement workers, including management personnel from outside the plant which is the location of the strike, would mean that the newspaper involved would instantly be unable to publish.

As committee members are well aware, a strike vote is often held early in the negotiating process and can be effectively used as a union bargaining chip or wedge, but much often transpires between the time of the strike vote and when a walkout actually occurs. For this reason, we believe employees should be guaranteed an opportunity to reconfirm or rescind their earlier vote. It's unfair to hold employees to such an important decision until they have all the facts, and those facts are often not available at the time of the first vote.

Such a provision not only gives employees more direct control over their destiny, but it forces unions and management to be more flexible, creative and responsible. It also helps to reduce the likelihood of strikes which may in part stem from a difference of perspectives, principles or personalities which may exist between labour and management negotiators. The need for this type of safeguard is further magnified because of the ban on replacement workers. Let's not forget that if the business doesn't survive the strike, there are no jobs to go back to.

Many industries are able to hedge against the impact of a strike by stockpiling inventory. Because of the nature of our business, that's obviously impossible. We cannot produce newspapers in advance. Employers who cannot afford a shutdown will have little choice but to make additional concessions at the bargaining table, but employers do not have bottomless pockets. In today's highly competitive chase for the consumer's precious after-tax dollar, business must be more productive, more efficient, more aggressive, more creative and give better service. Increased labour costs cannot be paid for with magic beans. Cuts must be made somewhere, often a little here and a little there, and it usually ends up meaning fewer people expected to do more work.

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Many industries have sufficient employees to at least provide a skeleton staff during a strike. For most community newspapers, this is also impossible. We often have staff of less than a dozen, each person performing a unique role.

Many industries have large, central locations with all management and non-union personnel in one place. Our business tends to be very different. Many Ontario community newspapers are independent or decentralized units, parts of small or medium-sized chains. Many of our managers are located at external offices and would therefore be precluded

from doing the work of striking employees in other offices or the central publishing location.

All of this means the proposed legislation would immediately shut down our newspapers on the first day of a strike.

Our security lies in our ongoing relationship and trust with our readers and advertisers. If that relationship is severed, it can be very difficult, time-consuming and costly to re-establish.

There is an even more alarming possibility. While our businesses would be forbidden by law from functioning, our striking workers are free to found and operate a competing newspaper. Strike papers are not unknown, although until the proposed changes the most they could do was compete head to head with the existing newspaper. This legislation gives the strike paper all the advantages. This creates the potential for entrepreneurial union members to force a strike, close the community newspaper for which they work and start their own paper without competition. This is ridiculous and it's entirely unacceptable to the community newspaper industry.

Labour's legitimate goal is to improve the general condition for its members. This involves entering into collective bargaining looking for a wage and benefit settlement that increases the disposable income of employees. The goal is to at least recoup what has been taxed away since the last collective agreement and build in a cushion for what will be taxed away during the term of the new agreement.

Businesses are not capable of bearing the brunt of the burden for our nation's fiscal woes. Governments of all levels can do their part to improve long-term relations between labour and management by better managing their own finances and not furthering the cycle of debt.

Our association represents hundreds of small businesses from one end of this province to the other. We are trying to adjust to a myriad of new legislative initiatives such as pay equity, new environmental legislation and associated tariffs and new taxes from all jurisdictions, including payroll taxes and the GST. Our postal rates are rising exponentially.

We're facing the worst recession since the Great Depression and a fundamental restructuring of the advertising industry. Many of our small towns are under economic attack. We're astounded to find ourselves here today begging the government to back away from labour legislation which fundamentally alters the workplace.

Small businesses fear that the bad blood which has infected relations between some larger businesses and some larger unions will now trickle down to the small and medium-sized firms. Our fear is that the "we" attitude that employees and owners have together fostered in our workplaces is going to be fouled and turned into "us" and "them." If that happens, everyone loses, with no exceptions.

We find it ironic that the greatest threat of this legislation is towards homegrown small business in Ontario. International and transnational corporations will move their investments to jurisdictions that suit them. It's the small business sector that must be looked to for future growth and innovation in Ontario and we find ourselves under attack from our own government.

We respectfully ask the government to immediately withdraw and reconsider this proposed legislation. Restart the process in an environment of equality, understanding and dialogue which involves small business and deliver a positive and meaningful reform that will meet the changing needs of all stakeholders.

The Chair: Thank you. Mr. Offer, five minutes, please.

Mr Offer: Thank you for your presentation. I got the feeling throughout your presentation that this is really founded on a principle of the rights of an individual. I have a specific question but just as a preamble to that question I hear you saying—please correct me if I'm mistaken—on the issue of replacement workers that the issue is not the right of an individual to associate, or the right of an individual to join a union, or the right of an individual to strike, or the right of an individual who's on strike to try to obtain some other employment, but rather, if all those rights are recognized and protected, as I think they should be, then there should still be the right of an employer to be able to continue operations.

I hope you would be able to comment on that, but my specific question is on the rights of individuals around organization. What is your position, in an organizing drive with respect to the secret ballot, whereby workers have the right, first, to be fully informed about what unionization means to them, to then be able to cast their vote in a free and secret manner in order that their true wishes be heard? I would like to get your thoughts on that aspect.

Mr Bosveld: I think, as a matter of principle—and we each represent different newspapers and we're together on a board that represents 274. As we said, we're a very diverse group. My personal view is that any vote should be free and conducted in secret. That's just as a matter of principle.

Mr Lorne Eedy: With full disclosure bargaining.

Mr Bosveld: Yes, by both sides.

Mr Offer: If I can just go back to the first comment I made on the issue of replacement workers, we've heard various opinions on this issue from individuals in your line of work, in the newspaper business. Are you stating that it is the rights? As we respect the right of an individual to strike and to obtain other employment even during a strike, so should your right to continue operation be recognized in this way. They are not necessarily exclusive of one another, but rather it's a question of consistency.

Mr Bosveld: As the daily publishers referred to, possibly the largest of the dailies might be able to find a way to struggle through a strike. But they made reference to the fact that the ones that will be hit hardest, even in their own association, are their smaller members. We are even smaller yet and, as we say, we believe this legislation has a potential to put us out of business from day one and tie our hands while our employees, whom we've paid to train, can walk across the street, open a competing newspaper and we still will not be able to hire replacement workers. Our hands are tied during that process.

Mrs Cunningham: With regard to worker replacement, we heard from the larger newspapers earlier today and perhaps you are of their positions. But when you talk

about putting yourselves out of business, I think it's very interesting when you talk about newspapers starting up elsewhere because, in fact, even without the legislation, that happens. Perhaps you could tell us the difference between now and if Bill 40 comes in. Just expand upon it a little bit.

Mr Bosveld: We have no problem with competition. It's quite interesting, often around our board table we have board members who are in competition with each other and most of the time we can put those differences aside during our board meetings.

We thrive on competition, but we don't believe it's fair competition for us to be in a situation where we are put out of business by the legislation, while the strike paper has all the advantages. They can continue to publish and drag out the process. Technically they still are employees. We're really curious to determine, and we haven't been able to get an answer to this, if that employee leaves and begins a strike paper, at what point does that person cease to be an employee of the original newspaper? To the best of our understanding, it's a process that can be dragged on for quite some time to the advantage of those who've begun the strike paper. They're holding all the cards.

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Mrs Cunningham: Also, could you expand on page 3, where you talk about it being totally undemocratic that an employee could find himself or herself a member of a union without being given the opportunity to vote? How would that work in your newspaper?

Mr Bosveld: Ours is a family newspaper, so I hope that over Sunday dinner they'll let me know if they're going to do anything. But our concern is that we have small newspapers. Oftentimes, as we've said, we can be dealing with less than a dozen employees. I guess a concern would be that if eight or nine of that dozen decided they wanted to become unionized, they could take action against the wishes of the remaining members.

Again, it is our fundamental belief that in a union, like in any other organization, membership is voluntary. As a matter of principle we do not believe that your job should be dependent upon belonging to the union. If that is your choice, that's fine, but you should also have equal freedom of non-association.

Mrs Cunningham: So you're obviously in favour of a secret ballot for everybody.

Mr Bosveld: By all means.

Mrs Cunningham: That's your point there.

Mr Bosveld: Yes.

Mr Jackson: I appreciated your reference to concerns about job violence. I know all of you were present when the large daily newspapers presented their case and they referenced their experience with increased violence and the Quebec model and so on and so forth.

I wondered if you were aware that not only is this a complicating factor—you make the dramatic point that the violence that is a chargeable offence at a ballpark won't be chargeable. I wonder if as writers, editorial writers, as owners of newspapers, you're aware also of the fact that

we've received—I'm aware of three government nominees to police boards where the nominees have known criminal records for picket line violence.

In fact with the combination of this legislation and the fact that on police service boards the NDP have nominated labour organizers with criminal records for picket line violence who are now in a position of being the bosses of police officers, police officers are saying, "What is the message to me when my employer asks why I charged the individual for smashing in a truck or for hitting a person who is on a picket?" I think there are legitimate concerns that the level of violence in our province is going to increase with the combination of those two factors. I wonder if you are aware of these appointments.

As an interesting side note, the person responsible for these nominees is the Labour minister's son, Andrew Mackenzie. He's the person responsible for selecting and sending forward to cabinet these nominees to police boards. Labour seems to have its fingers into everything these days, but if it means a more violent Ontario, certainly I would hope you were more aware that this trend was part of a parallel trend we're experiencing.

Mr Bosveld: No, we weren't aware, and we believe that the reference that reform of the labour law would reduce violence is just a smokescreen, because there are laws in place.

Mr Ward: I'd like to thank you gentlemen for your fine presentation and for taking the time to come down today. You mentioned, I think in answer to Mrs Cunningham's question about employees perhaps not having an opportunity to voice their opinion during an organizing drive—recognizing that you are community newspapers with a very small number of employees, some of them family-owned, as you are, which newspapers has that happened where nine employees have made the decision to join a union, more than likely the Southern Ontario Newspaper Guild, and the other three weren't aware? We're receiving a presentation tomorrow from SONG and I'd like to be able to ask them that.

Mr Eedy: I think my comment simply is that we're talking about legislation that's proposed. That's what we're talking about. In the current situation, we're happy with the legislation right the way it sits right at this moment.

Mr Ward: You're satisfied with the present 55% certification process?

Mr Eedy: Yes.

Mr Ward: I was under the impression you weren't and that you had some actual experiences of nine employees signing a card and the other three not becoming aware. So you were just speaking theoretically about a scenario that may develop.

Mr Bosveld: That's right.

Mr Ward: Okay, just so I understand. I think there's common acknowledgement—we haven't heard from too many presenters or even the opposition on the government side that there is a need for labour reform, that it hasn't been updated significantly since 1975, that the workplace and workforce have changed dramatically in that time frame.

Now you suggested that this entire bill be withdrawn and the process be looked at in a renewed fashion. Some of the amendments are in existence throughout Canada in every jurisdiction. I refer to the facts that full- and part-time workers' right to single-unit representation is in every other jurisdiction including the federal jurisdiction, that the petition restrictions that you have concerns about are in existence in every other provincial jurisdiction, that the professionals' right to organize is in the federal jurisdiction, BC, Manitoba, Quebec, Newfoundland and Saskatchewan, the vast majority of provinces. Why would you object to those amendments?

Mr Bosveld: I think our key objection still all centres on the aspect of replacement workers. That is what will put us out of business from day one.

Mr Ward: Your key concern is replacement workers, not so much the other amendments which I doubt very much would have an impact on your organization at all, such as the security guards' right to join any trade union.

Mr Bosveld: Not yet.

Mr Ward: Now a follow-up question—I still have a couple of minutes: In Brantford we have a very fine community newspaper called the Brant News. It's unorganized as far as I know and I don't see any reason why it would be. I don't see why the employees would make that conscious decision. You have some excellent staff at that community newspaper. I can think of Doug Farrell and Dave Harrison as two very fine examples and you did have another one, Sharon Slater, but unfortunately due to the times she was laid off.

Using Brant News as an example, why do you think with labour reform those employees, Doug Farrell, Dave Harrison and the rest, would make the decision to suddenly say, "We want to be organized," and if they did, why would they make such unreasonable demands on the publisher of the Brant News that they would be forced to shut it down, in fact take their jobs away and their livelihoods? Why do you think that would happen?

Mr Eedy: The Brant News is part of a chain of newspapers and this might not happen in Brant, but it might happen in one of its sister publications, where there might be interest in joining the guild. More than likely what is going to happen is the guild is going to approach them. They're going to go down the list of the Ontario community newspapers starting at the obvious largest chains, which are already unionized, and they're going to go right down.

I think Brant News is owned by Newfoundland Capital Corp, which probably represents 18 or 20 community newspapers in Ontario. Obviously if I was a member of the guild as part of its negotiating team, I would be very interested in them as being part of that.

Mr Ward: Do you think the vast majority of your employees in your association would think they need to be organized and that this labour reform is going to allow them to make that choice?

Mr Harry Stemp: I don't think they are looking at it as they need to be organized. What we're concerned about is it's going to become easier to organize.

Mr Ward: As far as your organization is concerned, in what way? I just need this information, I'm sure not only for my benefit but this committee's benefit as well.

Mr Eedy: The fundamental problem that we have—it goes back to replacement workers—is that a newspaper in a small town is like a Chevrolet dealership or a Ford dealership. There simply can't be two Ford dealerships in the town. I think all of you here can understand that if you are from a small town. Two can't make money; one can.

If you're in a position where you can't replace your workers or you're in a position where, for instance, the only choice you have is to publish a paper with no advertising, our business is probably the only business in existence that is run by goodwill. It's cash-driven; it's driven from week to week. If that cash doesn't come in the door, the publication ceases, so if we're not allowed to continue to publish, we're sitting with an investment that literally we can run out of a suitcase.

Now with desktop publishing, as everybody in this room knows—I'm sure everybody has their portable computer—literally with a laser printer you can start printing. You can rent the space. You can—

Mr Ward: But why would Dave Harrison and Doug Farrell—

Mr Bosveld: I would too and I agree.

Mr Ward: I know those individuals and I doubt very much if they would take the conscious decision, and the rest of the fine employees of Brant News, to say, "Look, we're looking to withdraw our services for whatever reason and we know that if we do, Brant News is going to cease to publish and there go our jobs."

Mr Eedy: You're talking about the management of the paper, though.

Mr Bosveld: I think Lorne has a point, though, about the Brant News being owned by a larger organization. What we have seen, for instance, with the Brabant papers around suburban Hamilton, we have an organization there that is owned by Southam and when the guild approaches it is on the basis that community newspapers do not have the financial resources of the larger dailies. The employees are approached by saying, "This is what the dailies are getting."

We do not require, for instance, the same experience sometimes. Community newspapers will often hire a

student recently graduated from a college program where only an exceptional student might be able to find placement with a daily in that scenario. But, yes, knowing the folks at Brant News, and having—

Mr Ward: It would never happen.

The Chair: Mr Ferguson, you have one question. You've waited patiently.

Mr Ferguson: Thank you, Mr Chair. Just one question. Gentlemen, as you know, the Canadian Daily Newspaper Association appeared here this afternoon and now of course you're here representing the Ontario Community Newspapers Association.

My question simply is this: Given your overwhelming opposition to this piece of legislation, what reasonable assurance can you give the general public that, in your reporting on not only the activities of the government but the activities of this committee on this particular piece of legislation, you're going to exercise even a limited amount of journalistic impartiality so that both sides of the story are told when it comes to this piece of legislation?

Mr Bosveld: Just because we're a newspaper association I don't think it's fair to deny us the right to express our concerns about things that we feel legitimately affect our industry. I believe that all of the MPPs present represent all their constituents, not just those who have voted for them. I think we can separate our responsibilities, and I believe you do also.

The Chair: People, the committee wants to thank the Ontario Community Newspapers Association for being here this afternoon and for participating in this process. Your presence here has been an important one. We've listened carefully to what you've had to say and you will undoubtedly assist this committee in making its determinations. I want to say thank you to you.

I want to tell people who are paying attention to this on the legislative channel that we're going to be back at 6:30 until 9 o'clock tonight. We trust that they'll watch with interest as they have all afternoon, or come to Queen's Park and participate in person by making use of the observer seats here. We're recessing till 6:30. Thank you very much, people.

The committee recessed at 1704.

EVENING SITTING

The committee resumed at 1830.

OSGOODE HALL LAW SCHOOL

The Chair: We're going to start this evening's session. The first participants are professors Tucker and Glasbeek, from Osgoode Hall Law School. Would you please come forward, gentlemen, seat yourselves and identify yourselves so the people watching know which one of you is Tucker and which one of you is Glasbeek. Tell us what you will, and please try to save 15 minutes for questions, assuming there are enough members of the committee here to pose them.

Mr Harry Glasbeek: I'm Harry Glasbeek and this is my colleague Eric Tucker. We're from Osgoode Hall Law School at York University. We both specialize in labour law and therefore are very interested in this process and what's going to happen to this bill and we're very appreciative of the opportunity to come and talk with you for a little while.

We have circulated a piece of paper which might be too long for busy people like you but which for us as academics of course is just a tiny little hiccup, 20 pages I think it is, or something like that, which is hardly worth writing, and when it takes two of us, it can't go on any of our résumés.

Basically we've divided the paper into three submissions, but there are really only two kinds of submissions we wish to make about bill 40, and we'll put those to you in order. We'll speak to the paper. I won't read it. It's boring enough as it is.

The bill's very controversial, or so it seems to us, controversial because there is an opposition which seems to be concerted and almost way out of proportion, quite amazingly so, considering the actual focus and content of the bill.

The second submission we would like to make is that on the other side of the fence it's almost equally bad: Bill 40 fails to deliver on the NDP's stated agenda in any serious way whatsoever. So as academics, we're in our usual position of: "You're all clods; nobody is worthwhile." Of course we don't mean that; we want to participate and see how we can help.

I'll offer my comments on the first kind of submission, namely, that the opposition is completely disproportionate, and Eric Tucker will address the issue of the NDP's failure to deliver on its agenda.

First, the disproportionate argument in terms of opposition. What do we have? We have basically one premise and it goes something like this: Labour law was just perfect until Bill 40 came along. The balance was just right, with no need to move it one inch one way or the other. Indeed, if you did, the whole thing would come apart, especially if they tilted it in favour of the labouring classes.

Again, as a humble academic, I cavil at that sort of premise. The labour law we have in Ontario right now of course is the result of gigantic political and economic compromises, primarily reached during and after the war, where the forces of capital and labour and government came together and worked out some kind of mediated

regulatory system. For a while that seemed the right system at that time, given the balance of forces.

Social and political and economic needs change all the time and therefore compromises change all the time, so the idea that nothing can be altered without endangering the whole fabric of society is absurd on its face, and that starting premise flaws much of the concerted opposition to the bill, that nothing can be changed.

Let me be concrete about that. One of the assumptions of this status quo which is unalterable, certainly not in a way that would tilt the balance towards labour, is that it really had provided just the right amount of material benefit and possibilities to people.

The fact about collective bargaining in Ontario is that it didn't apply to the majority of Ontario workers right from the beginning. It has never applied to most Ontario workers and still does not apply to most Ontario workers. In particular, the people left out are the visible minorities, first nations people, differently abled people, women, the young, the old. They are disproportionately disenfranchised from the supposed benefits of statutory collective bargaining. They have been, always have been and will continue to be so under Bill 40, I may say.

So it was never true, and the results of that, in terms of the right kind of balance and the right amount of material benefits, have been particularly unpleasant. If we actually stopped to think about what the results are, I don't think we'd be all that proud. For instance, Canada, Ontario included, has one of the worst ratios of male to female earnings in the first advanced nations of the world. Canada, including Ontario, has one of the worst, if not the worst, occupational health and safety records of any of the jurisdictions in the first industrialized world. Our benefits, in terms of family benefits, pensions, maternity leave, sick leave, holiday, hours of work, are all worse than their counterparts in Europe. We only begin to look human and advanced if we compare ourselves to some states in the United States and to the Third World.

Now, as a balance, that doesn't strike me as something to be proud of. That doesn't strike me as being unalterable in any way. In that sense, the concerted opposition seems terribly disproportionate.

In addition, what you would say from that is that at the very least, what any labour law reform of any kind ought to envisage is to include the ability for people to help better themselves to avoid these harsh results we do have. The answer to that has been, so far, in Ontario, "The best way to help people to help themselves is to give them collective bargaining rights." So what you would want to give them is the ability to organize themselves better.

Now, this apparently raises the ire of many of our citizenry. This apparently is unacceptable; this will tilt the balance too far. That seems to me a denial of first citizenry rights of all people in Ontario as a starting point, and something that can no longer be tolerated as an argument, not if we're serious about being a decent society. We can see that in many ways. We have food banks in this city

where working people go. That can't be because we have the right balance; that cannot be so.

All right. Having said that, what we therefore need is a compromise at a different level. Unfortunately, many of the proposals Bill 40 offers are proposals in respect of organization and collective bargaining power which exist elsewhere in Canada already and haven't tilted the balance very much at all; that is, they haven't brought the house down. Nothing much has happened; it hasn't improved conditions all that much and nothing much has happened. The reason for that is because they do not question the starting points of statutory collective bargaining, which disenfranchise so many people in the first place. Those proposals do not question that.

For instance, what we find in Bill 40 is not an adequate support for organization, little by way of enhanced collective bargaining power and, of course, nothing to address the vast economic restructuring which is going on presently in Ontario.

I'll speak very quickly now to some of those issues in detail; very minor amount of detail. You know the bill very well, I imagine.

Organizational rights: How do we best picture that and conceptualize that? I've already said that we began to have truly a public commitment to statutory collective bargaining well entrenched from the 1950s onwards in Ontario. Up to that time, trade unions were seen as sort of unacceptable bodies because they acted in restraint of trade and inhibited the individual's right to trade; individual workers, individual employer's right to trade.

Therefore, the criminal law and the civil law was used to constrain and restrain them. The need, therefore, to change that, if you're going to have collective bargaining as a reality, was to give them a new status.

1840

Canadian politicians—and I suspect some people in this room are included in that—are very proud to stand on public podia and declare that one of our insignia of freedom is free trade unionism. Trade unions have become an absolute mark of a new quasi-governmental type of agency which participates in labour market regulation. By the way, our courts are fond of saying that and our Supreme Court of Canada used that as its basic tenet in deciding the Lavigne and OPSEU case recently. That is conventional wisdom in this country.

If that is conventional wisdom, it suggests that everybody should have the right to belong to a trade union in this free country. Of course, the question is that there are many, many people who so far have been excluded, both practically and legally by definition under the Ontario Labour Relations Act.

Here we find it particularly disappointing that the government saw fit to continue to exclude front-line supervisors as people who ought to be able to unionize and participate in collective bargaining. It would have been a minor step. Employers, I understand, object to that; their ostensible notion is that it will be a conflict of interest if these people organize. Of course, that can be avoided relatively easily by putting them in separate bargaining units if you really are worried about that. The idea to exclude

somebody from what is supposedly a basic right in Canada is a denial of some of the freedom tenets which we hold dear.

If the right to belong to a trade union should be free, the right to organize should be even freer; that is, if it's your right to belong to an association in this country, you must have the right to organize such an association and to want to belong to it. Your right should be supported by the law, not impeded in any way, unless it's absolutely necessary.

The Ontario Labour Relations Act up to now has never permitted that to happen. It has balanced the interests, the interest in particular of the employer's free speech, which is of course perfectly defensible, except for the fact that in an organizational campaign the employer's right to speak is vastly disproportionate in influence compared to anyone else who speaks. And of course the employer's right to discipline for productive needs can be easily translated, and often is, into the right to intimidate employees who seek to organize.

We've always had the Ontario Labour Relations Board to guard against that but of course it always guards after the fact, after the atmosphere has chilled. It comes in later and the workers can never be guaranteed that they will win, so it takes courage to organize and indeed it requires people to go about their business secretly. That's an odd thing in a free country. We must remember that unionization often takes place in motels like a tawdry assignation, like a clandestine activity, because people cannot organize at their workplace where they can contact each other openly and freely. They are not allowed to do that because it interferes with productivity and because of some notion that it is wrong. That is not spelled out. This is monstrous in a free country. Unfortunately, Bill 40 does nothing about that.

Its idea that there shall be no petitions after certification has been applied for is after-the-fact remedy. The fact that the OLRB will be quick and it can interfere more quickly is after-the-fact remedy and leaves uncertainty. The crux of the problem remains. This is a sadness. It is untoward.

In addition, no lists are provided. Can you imagine you running an election without having an electoral list? That's what unions are required to do. You wouldn't think of that, as parliamentarians. You would think that's a denial of your citizenry rights. We deny that to workers every day. There is no requirement to give those employment lists to people who want to organize. And of course we've always got a good reason: privacy. As a balance, it's an imbalance.

I'll speak very briefly now, otherwise my colleague will kill me.

Bargaining rights under Bill 40: apparently you're going to give domestic workers the right to bargain. This is not the sort of stuff that's going to shake the economy. The bargaining rights of domestic workers are an illusory and symbolic notion. They cannot bargain in any meaningful sense of the word. We're going to say that a few times. Just to have bargaining rights—we are arguing, of course, that people should have them—doesn't translate into anything by necessity. Nothing follows from that. You've got to do more if you're serious about collective bargaining.

What else have we done? Maybe agricultural workers can unionize, but the right to strike is problematic. Think

about that. What we ask you to think about is, in this country, why are we so afraid to give people what rights they have in many other countries of the world? Are we less capable of dealing with competition than other parts of the world? Is that our anxiety?

Anti-scab: That's a big issue. I pick up my newspaper every day and there it is. It's almost bizarre. A strike is the means we choose—a regulated strike, by the way; it's very hard to have a strike in Canada and in Ontario—to resolve a problem on an economic basis, not a political basis. The party that holds out the longest wins, and that's what brings the parties together, this sword of Damocles of economic ruin.

What workers are afraid of, of course, is that when they withdraw their labour, if the employer can continue to make a profit, their withdrawal of labour will mean nothing. Necessarily, they will ask other workers not to work for that employer and other people not to trade with that employer. That follows as day follows night. Once you give the right to strike, that is a concomitant. Free speech, which is what the Supreme Court of Canada has said this is, is to go out and say to people: "Please don't work for this person; we're on legal strike. Please don't trade with that person; we're on legal strike."

Of course, if replacement workers can be hired, what that means is that speaking doesn't amount to much. "Please don't do that. You're taking our jobs, our livelihood, our children, our families, our houses." Polite speaking doesn't do it. Very soon there is pushing and shoving and violence and police and bad pictures on your TV; ugliness everywhere.

How to stop that? Have a law that says, "There shall be economic pain for both parties." That's the whole idea: Workers withdraw their labour, so the employer doesn't produce. Quite straightforward. "Ah, but," say the employers, "out there, workers go out and get other jobs." If anybody believes this in Ontario, of course they're somewhat foolish, but none the less, "They'll go out there and get other jobs." There's not many about. What jobs? But even if they get them, what's wrong with that? What the worker is doing is selling the only asset she has to withstand that economic pain.

The employer is free to do that any time. If he's really pinching, he can sell one of his assets. That's evenhanded; perfectly equal. But the employing groups don't seem to like evenhandedness; they want upperhandedness. That's the balance they've had until now. That's why they're so keen to keep it.

The bill, unfortunately, only offers a mild change to the scab labour situation in Ontario. By providing that managerial people can do the work, that non-union people can do the work and that work can be contracted out, the likelihood that the replacement worker issue will go away is very remote. It's not enough. The logic of the system requires more.

I've taken too much. I've got much more to say, none of it interesting. I'll turn it over to my colleague.

1850

Mr Eric Tucker: I'll be extremely brief, hopefully to leave you some time to address any questions you would like.

In some sense then, my colleague has identified half of the argument, that is, tried to examine the arguments you've heard so frequently in opposition to Bill 40. One of those arguments, as he's called it on earlier occasions, is the Goldilocks argument, that everything is just right. I think we've demonstrated that things aren't quite just right as they stand now.

A second argument you've often heard is that even if they're not just right, "Well, we just can't do any better." Of course, as you know, other provinces, other jurisdictions seem to do much better. All of these provisions exist in some form in other statutes, so there doesn't seem to be a lot in that.

A third argument you've heard is that somehow what is being proposed in Bill 40 is a radical departure which will traumatically alter the balance of power between workers and their employers in this province. Again, as we've argued, quite simply that isn't the case. It's from that last point that I want to pick up and begin to develop another kind of opposition to Bill 40, which I don't think you've heard or at least not heard enough of to this date; that is, that I think that when the government started out on the enterprise of reforming labour law, they recognized that something substantial needed to be done, that the existing scheme of collective bargaining we have in this province was no longer keeping up with the developments that were occurring in our economy and our society generally; and that in the process of developing labour law reform something has gone wrong.

Beginning with the earliest proposals before the Burkett committee, I think the labour representatives who tried to formulate them had already cut back in anticipation of political opposition, and ever since then the government has been stepping back and back and back. If you trace the history of this, you can see that every concession that has been made in the development of the current proposals before you constitutes concessions to opposition arguments that have already been made by employers. Virtually no significant changes have been made in response to submissions that have been made by labouring groups coming before you saying, "The bill is inadequate and needs to be reformed in this following way." The whole process that's taken place has been one of retreat in the face of employer opposition without any responsiveness whatsoever to some of the concerns that trade unions have been bringing before you in earlier submissions. In effect, what we wind up with then is a bill which really fails to meet the government's own stated objectives.

Now let's take a look at some of those again very briefly. One of the points that the government has been emphasizing is that this legislation will promote cooperation and partnership between workers and their employers. Cooperation and partnership are seen to be keystones to the kind of economic renewal which the government envisions for Ontario, one which will create a high value added economy based on competitive advantage developed

through research, investment, development, not through sweating its labour force by paying them miserable wages, lower wages than are paid in the lowest-wage states in the United States.

We want some kind of partnership, but there are all kinds of partnerships we can have. At one end of the spectrum we can have partnerships in which the weaker party participates but on terms that are dictated to it by the stronger party. On the other hand, we could have a partnership in which you have essentially two equals who share in important decision-making. I don't think the government has often been particularly clear about just what kind of partnership it envisions and at what level, but I presume it means some kind of partnership in which organized labour is at least an active and effective participant, not one in which it participates on terms that are dictated to it.

What does Bill 40 do to encourage the formation or the development of this kind of partnership or cooperative arrangement? Let's take a quick look at some of the issues regarding the organization of production.

Under the regime as it existed, employers had the right to contract out bargaining unit work. They had the right to introduce technological change without regard to the impact that might have on the labour force. They had the right to lay off workers or to close down their operations entirely. All of this can occur during the life of a collective agreement, subject only to whatever restrictions unions might have been able to exact from them in the previous round of collective bargaining.

Of course, because employers highly regard these managerial prerogatives, they have been quite unwilling to give up very much in regard to these subjects. The only protections workers got were largely through employment standards; they could get notice of mass layoffs individually and perhaps of severance pay.

This was not a basis on which a partnership could develop. One party clearly had the upper hand; the other was in a very weak position.

What does Bill 40 do to respond to this problem which I think the government initially correctly understood as being a serious problem. What we've gotten in Bill 40 is that there is now a duty on the employer to notify the union—not the individual workers now: the union—of when there's going to be a mass layoff and to bargain some kind of adjustment plan.

Now, two points about that in terms of partnership. First of all, it's a kind of partnership that occurs after the major decision has already been taken: "We're shutting down. Let's negotiate an adjustment plan." Where was the participation in the decision about the future of the firm? There's no requirement for unions to be involved in that earlier process. Participation occurs at the tail end of a decision that's already been made and now we're going to deal with the consequences of corporate decision-making.

Second, what bargaining leverage does a union have in those circumstances? Virtually none. What is the meaning of a duty to bargain in good faith when one party has all the party and the other party is just trying to get anything it can out of what has become a desperate situation? It's certainly not a way of organizing the bill that leads to a

form of partnership that resembles or encourages some equality or even countervailing power.

With respect to the duty that is going to be placed in all collective agreements to have periodic consultations, again, in the absence of some substantive content, what would one expect to develop from that? It seems to create simply a format unless there's some surprise where employers can simply inform them of what their proposed plans are. Indeed it could become a way of saying: "This is what we're planning on doing. If we don't get these concessions, this is what we're going to have to do." What does it do to address the problem of unequal power?

The problem with most of these provisions is that they fail to come to grips with what the reality of the situation is. We're dealing with a serious imbalance between employers and workers, and in the end saying, "Go out now and try to negotiate something." Unless the legislation takes that imbalance seriously and does something to rectify it, very little can be expected.

Very quickly, the second major objective that's stated in the government's proposal is a recognition that collective bargaining no longer fits the realities of the new workplace, nor does it fit the realities of the new workforce.

We've already talked about the fact that the old model of collective bargaining was only ever available in any meaningful way to a relatively small sector of the workforce. It never worked well in the highly competitive service sector or other highly competitive sectors of this economy. It was a mechanism that was designed to operate for a large employer operating a mass-production industry or a large resource industry where wages could be taken out of competition relatively easily and the costs would be passed on and employers would compete on some other basis.

It was also built on the basis that the typical employee was a white male who had a family to support, so there was a notion that a family wage had to be paid to this individual in order that a working-class family could consume the products that these new mass-production industries were going to produce. For those who didn't fit within that model, collective bargaining didn't deliver and was not the primary mechanism through which the terms and conditions were determined. Rather, that was left to employment standards which provided a bare minimum on which people could survive.

But what does the bill do about this? It's a lot of rhetoric about the importance of addressing the needs of women, of minorities, of the differently abled, the first nations people. At best, what this legislation does is attempt to give these new workers in these new developing sectors better access to an old style of collective bargaining, to a kind of collective bargaining that is not going to work with them. If domestics have to bargain with their individual employers, they have no bargaining leverage. It's an absurd notion. If workers in small service sector, highly competitive industries have to bargain with their own employers, they'll never get anything; they have no bargaining leverage, as their employers have no leeway.

Unless steps are taken to fundamentally alter the bargaining unit structure to allow for some kind of consolidated bargaining by groups of employees in that sector

with groups of employers, then the kind of collective bargaining that workers might get access to will be relatively meaningless.

I think I'll sum up there, since there's virtually no time left. I would suggest, when you have the time, that you take a closer look at the paper. You should proceed to pass this legislation by all means, but once you've done that, begin to think about the real issues that need to be addressed and go on to the next stage so that we can get changes in our labour laws which will make a difference for those groups in our society which really need reform in our labour legislation.

1900

The Chair: Thank you, sir. Mr Jackson.

Mr Jackson: Oh, you're not really going to start with me, but I guess you are. I would like to thank the learned professors for what I thought was a very interesting and stimulating discussion. But in the interest of time, I don't have any questions. It's unfortunate that more people didn't get the benefit of the presentation. I suspect we're competing with Polka Dot Door at the moment and that's unfortunate. I'd like to thank the professors. I found it most interesting. I have no questions.

The Chair: We'll even give you time for questions.

Mr Jackson: No, I have no questions.

The Chair: Mrs Cunningham.

Mrs Cunningham: I came in at the end, so it probably isn't appropriate, but I was curious when I heard you say, "Let's by all means pass this and then deal with the issues." Earlier this afternoon I said, "Why don't we deal with the issue"—and it happened to be the issue of the domestics—"and then worry about the legislation that doesn't seem to be that popular in this province"? So I was curious to hear you sum up that way, and I may have misunderstood.

Mr Tucker: The reason I would adopt that approach is that so far all we've seen are retreats from the original stronger positions. If this committee would be prepared to recommend that there be a significant restructuring of bargaining for domestic workers so that collective bargaining would be feasible for them, by all means do so; I would welcome it.

Mr Hugot: Thank you both for a very interesting presentation; it's one that I'll certainly want to read once, maybe twice again. There's a lot of interesting detail in here. I really appreciate the comments you've made about those who are very strong objectors to this legislation in terms of, first of all, that if it's not broke, don't fix it; everything's fine, we've got a balanced system now. The second major objection seems to be that, at least in some people's minds, this legislation will do something negative to our competitive position.

In reference to a couple of interesting documents—one of them is the World Competitiveness Report—right now, under this good system that we allegedly have, we rank 11th among 22 industrial nations in terms of productivity. We come in last in several key areas of merchandise and import-export ratios. We place 15th in management ability.

In another document, Canada at the Crossroads, by Michael Porter, a competitiveness expert or guru, he states that Canada was ranked lowest among the Big Seven industrial powers for labour-management productivity. So to me there's enough evidence to say that this competitive position that can't be altered that we have now by this legislation is not in the best of shape. It suggests to me that there is a different role for workers in the workplace and a different role for workers in the economy.

I'm one who believes that stakeholders, workers and communities are as important as shareholders and that those concerns should be taken into the consideration of the operation of any business. Real input from the workforce at the corporate decision-making level in all areas is something that I believe will help lead what we have to do in order to deal with the new world order, and there clearly is one.

Mr Glasbeek: Time for me to comment?

The Chair: Yes, sir.

Mr Glasbeek: I don't feel confident to talk about worldwide competition and competitiveness; perhaps if I can approach it from a more limited perspective. We started off by saying that the statutory collective bargaining regime we have is a peculiar regime which was a particular regulatory mechanism to deal with a specific set of problems. Canada's economic problem from a labour relations point of view has been that it's largely—and this applies to Ontario—a resource-exporting country and that mass production has always been conducted as though it were a branch-plant operation. Collective bargaining, it has to be remembered—and I think people here in this room know this, but we ought to take note of it from time to time—in Ontario and in Canada generally was adapted as a copy of the Wagner-Connelly act. Now, the Wagner act was introduced in the United States as a Keynesian instrument. When Canada introduced similar legislation during the war years, it was not as a Keynesian instrument, but really to deal with a shortage of manpower as it was then seen.

The possibility that workers in unions would have strong bargaining leverage was quite frightening at a time when production was very much needed, so the model that we've adopted looks like the American model and in large part plays like the American model, but is meant to apply in Canadian conditions and quite differently, not as a Keynesian model; that is, it's not meant to redistribute income. It is not meant to be a standard-setting mechanism. That is why we have all these people left out. That is why we don't have participation of the kind that you speak of. That is what is never envisaged in our model.

Keynesianism never came to Canada in the same way it came to Europe. It came in bits and pieces, one statute after another, years apart—very slowly, very reluctantly. It is not until about 1974 that we can talk as theorists about something like a social welfare system in Canada. So it is quite a different system.

Our competitiveness, therefore, going back to your comment, has always been based on the notion that we'll export stuff and hopefully get enough inflow of capital to

set up our own manufacturing. We've never done so. Statutory collective bargaining is meant to link mass production to mass consumption. We have little mass production and therefore we've had very poor links to mass consumption, which is the plight of the people.

Mr Offer: Thank you for your presentation. I don't have a very long question, though I might take some issue with you on the characterization of those who have come before the committee with concerns to the legislation. My question will not be on that. It will be on your first recommendation and to ask you for an explanation, because your first recommendation, I believe, at the end of all of the discussion, is that every worker in the province should be assumed to be part of a trade union unless he or she says no. Of course, you realize that would mean—and this is your first recommendation—you are suggesting that there be legislation which, when passed, would make all workers in this province, no matter what their wishes are, part of a trade union unless they then seek to extricate themselves from it. I was wondering if you might be able to explain to the committee the process and thoughts behind making this type of recommendation.

Mr Tucker: One way of analogizing it is that we all live in different areas of the province, and in each of those areas, in order to regulate our collective lives together, we have local government. Each of us is a citizen of that local government. Each of us is affected by the decisions of that local government. We don't have the option of opting out, even, of that kind of structure in trying to order our relations in some different manner. We can choose not to vote, but we are going to be affected by those decisions. We are members of those communities at a certain level.

What we're proposing is to assume, therefore, that in the context of work relations, again, the norm is that people organize their relations in some collective manner. So the starting point is that you are a member of an association of people who work, at the very least, in a common location for a particular employer, although we can think of variations of bargaining structure.

There could be many ways of trying to organize that, so there's still freedom of association, as there is in our local communities, even though you're a member of a community. We could think of mechanisms for elections that would be held, for example, to determine which trade union would represent them. There could be electoral competition over that representation, and people who were uninterested, as many of our citizens are, may choose not to participate, but the starting point is that you are a member of a collectivity. There is a normal structure through which that collectivity organizes its affairs.

The Chair: Thank you, Professor Glasbeek, Professor Tucker. On behalf of the committee I want to thank you very much for taking the time to come here and for your preparation. You've made a valuable contribution.

I would just remind people who might be watching that your comments on Hansard are available to them, as well as a copy of your submissions should they want to write to the clerk of the standing committee on resources development

at Queen's Park. That is available without cost to people who are interested.

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GREATER TORONTO HOTEL AND MOTEL ASSOCIATION

The Chair: The next participant is the Greater Toronto Hotel and Motel Association. Please seat yourself, sir, in front of a microphone. Tell us who you are, your status with the Greater Toronto Hotel and Motel Association and tell us what you will. You're going to have 30 minutes. Please try to keep at least the last 15 for comments.

Mr Ernie Nesbitt: I'll attempt to do so.

Mr Chairman, members of the committee, ladies and gentlemen, my name is Ernie Nesbitt and I have been asked to represent the Greater Toronto Hotel and Motel Association. The Greater Toronto Hotel and Motel Association and its members are part of the 1,200 members in the Ontario Hotel and Motel Association of the hospitality industry.

I see around here some faces I do know, so it's nice to see you again.

I have been asked to speak for the Greater Toronto Hotel and Motel Association on these proposed labour changes and amendments. The tourism and hospitality industry is a service industry; I don't think I have to really say that. Sure, we dispense liquor and booze and we serve food but basically we are a service industry.

I may digress from this text a little bit.

The Chair: We encourage you to do that, because we're all going to be reading it, in any event.

Mr Nesbitt: Normally people are looking for service. They want to be looked after by the people of their choice.

The tourism and hospitality industry has for many years provided employment to a great number—I really like to enforce that—of persons from minority groups and disadvantaged groups. In one particular tavern that I have, we have a crippled young fellow going to high school and he would be hard-pressed to find other employment. The boy is going to high school and he wants to go to university. He wants to be a lawyer. I don't know why, but he does want to be a lawyer.

Mrs Cunningham: I haven't a clue either; I share your views on that.

Mr Jackson: They make terrible politicians.

Mr Nesbitt: Let's not get into this.

The hospitality industry represents, we estimate, at least 300,000 people in this province. It's probably the largest single employer in this province and, who knows, maybe even worldwide. There are fewer and fewer people, through productivity and various changes, but our industry is labour-intensive and, quite frankly, we recognize many are not organized. Therefore we have really great concerns about the proposals that have been made by the government. On the surface we would say that a lot of the proposals are certainly acceptable and may be timely, but changes don't always end up the way that you think.

It so happens that I'm an owner of three restaurants and taverns: two Pat and Mario's, and I hope you've been to them—

The Chair: Can you tell us where they are?

Ms Murdock: Started in Sudbury.

Mr Nesbitt: Started in Sudbury, that's right.

The Chair: Where are they located?

Mr Nesbitt: One in Oakville and one in Guelph.

The Chair: Pat and Mario's in Oakville, Pat and Mario's in Guelph.

Ms Murdock: And one in Sudbury.

The Chair: And one in Sudbury.

Mrs Cunningham: And London.

Mr Nesbitt: And London. I don't know if you know it or not but Pat and and Mario's, East Side Mario's and Casey's are all in the same chain. I don't know if you know that or not but that is the truth. There are about probably 75 or 90 of them in the province. Collectively they would probably have 3,000, 4,000, maybe 5,000 employees. Our Guelph operation had 82. So it's labour-intensive and we're concerned.

First of all, I would like to clarify that in my opinion the right of people to organize themselves as a group, to improve their quality of life in their workplace, is a basic human right, without doubt, and also social justice in action. I must say this though: With those rights come responsibilities. I would trust and hope that the people involved would act responsibly and be good Canadians. Their actions should not be detrimental to others, financially and materially.

Quite frankly, the way things are today—three years ago, a little different story—for these associations or restaurants to survive is the key issue. It's not a case of making a lot of money; it's a case of surviving and coping with the environment we have, which is not good.

With the revisions proposed in the preamble, where the Ontario Labour Relations Board will have wide powers in the exercise of its functions, it would almost appear that it would have powers without limits. We question the labour relations board. Its role, as I see it, should be non-partisan, unbiased, and it should not be in a position to make decisions for people who should be making those decisions themselves. What is being provided to them could well destroy the credibility of the labour relations board.

Referring to first contract, employees and even the company might say, "We'll let the labour board decide it." I think that's opting out of their responsibilities. That's my opinion. "Let someone else make the decision, whether it be good or bad." I think the labour act should provide meaningful ways to facilitate labour and management to work out their differences, but not to enhance necessarily unions in our society. I must say this: I've been a member of a union, I've also been in management, and I recognize the value of both, without question.

The government of Ontario represents everybody and should not place itself in a position of benefiting one particular part of society. It would appear that many of the objectives of the bill being proposed are leading in that direction, and we're concerned.

The automatic access to first contract arbitration no matter what is, in my opinion, an infringement on the rights of management and on the rights of the union. Who knows? They may get a contract they don't even like. What happens then? Also, where will you find people who are non-partisan, extremely fair, who can satisfy labour, management and the labour department and government? I wish you luck, because I don't think you're going to find them. I only wish I had one.

It does appear that the suggested changes will facilitate the organization of new unions, and if there's a need for it, I see nothing wrong with it, but I think the government should not interfere in the process. If people want to be organized, give them the laws that allow them to do so, but don't get involved in the process of almost forming unions out of nothing.

In the bill there is a provision for full and part-time employees in one bargaining unit. The hospitality industry is probably the largest employer of part-time employment in Canada and the United States. In Guelph, the Pat and Mario's there, we had 82 employees and 60 were part-time; nice young people going to university, some of them in the hospitality school in Guelph. Wonderful. Getting some experience. But most of them in the whole industry are part-time.

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How can you build a strong union and labour movement which can function effectively with people who are just not interested in nor understand organizations like a union? I happen to know that most unions, big unions, 2,000, 3,000, 4,000 members—you know who runs the unions? Probably 30 or 40 people who meet on a monthly basis, and I take my hat off to them because the other 2,000 and 3,000, they don't care. They care only when it comes down to their pay book. Really, they're being run by a very small group of people.

In the case of consolidating bargaining units, I visualize—in the case of, say, Journey's Ends there are 125 in Canada, at least 50 in the province, with 20 employees each. After three, four or five bargaining units are put into Journey's End, what do they do? They put them into one union. You have 50 in the province of Ontario in one union. What union would object to accepting them? You have 20 times 50—there are 1,000 union members.

If they decided to withdraw their services to their employer, it would be tantamount to closing the Journey's End system down. I don't think that's right. I'm not saying they don't have the right to a union, but the Labour Relations Board will have the power to meld and put together bargaining units. I didn't say they would, but I didn't say they wouldn't.

As mentioned earlier today, survival is the situation; not to live well but to survive, and that's what we're going to do. We're going to survive as Canadians and as people in Ontario. No doubt about it.

Replacement workers: In an industry like ours, if the employees withdraw their services—say, one of your children is going to get married, then all of a sudden, three days before, the union withdraws its services, what happens to your wedding? The hotel has made a commitment

to provide a service and, to all intents and purposes, you can't bring anybody in. You can't even bring in your own family, that I read. You can't bring in your friends to help to look after those people. Is this right? That's there and I really question it. In my opinion, I think some work needs to be done in that area of replacement workers.

You also come down to the reputation of the individual place. Is it a good place to go and be served? If they lose that credibility of looking after them, such as up in Sudbury, Cassio's finally found they had a union, and your daughter's wedding, Sharon, was going to be—because I know you know Melinda—I don't have any employees to provide your meal." What do you do? I don't know. I would like to know.

Mr Jackson: Shift it to a union hall.

Mr Nesbitt: It's my belief that legislation should be good for all the people. When you look at the proposed legislation, sure there need to be some changes. "Labour reform" leaves the connotation, quite frankly, that there was an absolute injustice in existence. You know and I know that's not true because labour unions and companies are people. They're not legislation. They're made up of people, individual people with their hopes and wants. To call it reform really, I think, was a mistake. Change it. Change where you need to, by all means, but change it because you need to change it, not because you think it's the thing to do.

I did digress quite a bit.

The Chair: Thank you, sir. Mr Klopp, four minutes.

Mr Klopp: Thank you very much for your brief. As someone who supplemented his farm income for about four years working at the Green Forest as a bartender, I know very much it's a lot of work. In fact, it's like any business that's family-run, like this was. I would have sold my soul for my boss. He was a heck of a good guy and if there had been an opportunity to unionize, which I understand under the law there was even back then—I think your comments are very fair. I have enough meetings to go to; I don't need another one to go to. If I'm treated fairly by my boss, who's still the boss, although a lot of times he did let me share in his experiences—but you're not going to have that problem.

This legislation, the changes that are proposed—you mentioned that you feel that you don't have a problem with making amendments.

Mr Nesbitt: Yes.

Mr Klopp: Just as long as government isn't forcing people, then, to join them, I think was kind of the crux. From my understanding of the bill, and as one who is been on this side and had people come in and lobby, I think we made a number of changes, 10 major ones, and some of those were people who talked about it in my own riding, and I'm glad that we tried to mix a balance.

But coming back, there seemed to be a perception there that these changes then force people to join something. Where do you get that in there? I haven't seen it. If you could point it out to me, please. I haven't seen this in the bill, these changes that are forcing anyone to join anything

if they don't want to. It just gives them a right. But can you point that out to me, where?

Mr Nesbitt: Forcing them—I can't honestly say that the legislation—I hope I didn't leave you with that impression that you are forcing.

Mr Klopp: That's why I'm asking the question. Maybe I was wrong.

Mr Nesbitt: But the government profile in terms of labour reform—and that's what they call it—is to extend union membership without end, and that isn't necessarily the total answer. I've even had union people say to me, "There are some places that just don't need to be unionized." Union people. In fact, my best friend—he's dead now—was a union president and a very, very wonderful person. But I don't agree with you with that. If that's the impression I left, I don't want that to be construed. But I really do feel that the government has placed such high profile on this issue that it would appear that they're going to unionize everybody.

Mr Klopp: Well, it's not in here, as you pointed out. I just wanted to make sure. Maybe I was misled, too. Thank you.

Mr Nesbitt: I saw the first draft, and I'm sure you did, too.

I saw the report—in fact, I looked at it today. There's a report—

Mrs Fawcett: Burkett.

Mr Nesbitt: And as I recall, someone told me that the proposals were to make sure that never, ever again in the province of Ontario—as in the case of the T. Eaton Co when they were to be organized; they got certified but they never had the first contract—would it happen again where a union would not be in there, and that, in my opinion, is dangerous.

Mr Klopp: Well, that was the first report. Thank you.

Mrs Fawcett: Thank you, Mr Nesbitt, for your presentation, although I have to admit that with your one illustration you have sort of struck terror into my heart because my daughter, Kristen, is getting married a week from Saturday. I have to ask if you are telling me that with the way you understand Bill 40 there would be a possibility that we would have to call off the reception should the catering—

Mr Nesbitt: That's the way I read it.

Mrs Fawcett: Well, that is interesting because that would be really, really tragic.

Mr Nesbitt: That would be a shock to you, wouldn't it?

Mrs Fawcett: That would be putting it mildly at this point, yes.

Mr Nesbitt: And I don't think that's fair.

Mrs Fawcett: I hope not.

Mr Nesbitt: I hope not.

Mrs Fawcett: But the thing is, you can't replace, according to this legislation.

Mr Nesbitt: That's right.

Mrs Fawcett: I have another question. I have a letter that was given to me by Les Andrews from Kran Management

Services, and it does have the golden arches on and so I'm sure that he in some ways feels the way you do with this legislation. He has stated that he is certainly opposed to the legislation because it throws the balance between employers, employees and government completely out of whack.

He has several questions, one of them being—and possibly you could maybe give me your opinion of this—that with the government's replacement worker proposal it is removing the fundamental right of an individual to work in the province when he/she chooses. Is this what Minister Mackenzie meant when he said in the Legislature that Bill 40 is all about justice and fairness? I'm just wondering if you would comment on this.

Mr Nesbitt: I don't agree with Mr Mackenzie.

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Mrs Fawcett: I don't think Mr Andrews does in any way, shape or form either, and he's very, very worried because there doesn't seem to be the fairness here.

Mr Nesbitt: In the case of a motel, if the motel has a strike they cannot rent that room. They have nobody to look after it. That's lost money to that association, never to be recovered. You can't rent it over again; it's gone. In effect, I really would like to see the government consider some exemptions in these areas, because that is not in what I term the public interest.

Mrs Fawcett: To say nothing of, say, a large hotel that maybe is going to have the Shriners' convention in a year or something; they plan well in advance and I think they look very carefully where the negotiations are. There is potential loss, I would assume, if this kind of legislation goes through.

Mr Nesbitt: I would like to see this legislation go back to the drawing board—

Mrs Fawcett: I think that's a fair assessment.

Mr Nesbitt: —and come out as positive legislation as opposed to something appearing to be negative.

Mrs Fawcett: And bring all the players to the table to talk about it.

Mr Nesbitt: Sure.

Mrs Fawcett: Thank you.

Mr Jackson: I would like to pursue this notion of the impact on your service industry because you also are the cornerstone of our convention business in the greater Toronto area and, to a lesser extent, in other parts of this province.

Recently it's come to our attention that we are losing serious ground in the North American market for conventions. I wonder to what extent this kind of legislation, with its ability to coalesce all beverage and lounge workers and so on and so forth, could literally cripple the convention business if it occurred at a significant convention that had significant national attention such as, in our standards, something akin to a national leadership convention occurring in Toronto.

I was always offended when we were competing for the Olympic games that the city of Atlanta was funding the Bread Not Circuses program in this city of ours and interfering with the process. To what extent will we be crippled

simply by people marketing the fact that Ontario has such legislation, that with limited notice you could have all your services in your hotel shut down? We couldn't give the guarantees that were necessary. We're talking multimillions of dollars of revenue to this area and to this province.

Mr Nesbitt: It would be a disaster.

Mr Jackson: But other provinces would literally be out competing for those conventions and saying, "Well, you don't want to go to Ontario."

We found it fascinating when we had the summit meeting here in Toronto that—on two occasions in my life as a legislator we suspended labour bargaining rights: when the Pope visited us and when the six other heads of state for the economic summit visited us. I always thought that was a bit of a contradiction, that a multibillion-dollar industry in this country might be crippled in a similar fashion, but no regard for it.

Mr Nesbitt: You'll have to get that for Joan's daughter's wedding.

The Chair: Thank you, Mr Nesbitt. You've been an effective spokesperson for the Greater Toronto Hotel and Motel Association and we thank you very much for coming to us with your submission.

Mr Nesbitt: Thank you. Can I recommend that you go to Pat and Mario's and to Ernie's Roadhouse in Cambridge?

The Chair: Both are getting accolades from members of the committee, so people watching this on the legislative channel can take heed. Thank you for being here, sir. We appreciate your interest.

OPERATIVE PLASTERERS' AND CEMENT
MASONS' INTERNATIONAL ASSOCIATION
OF THE UNITED STATES AND CANADA
LOCAL 172

The Chair: The plasterers' and cement masons' union, Local 172. Please, sir, have a seat and tell us your name, your status with the union, with the local, and tell us what you will. We've got 30 minutes. Please try to save the last 15 minutes for discussion.

Mr Jerry Kinsella: Thank you. I'm going to ask the committee members to take off their industrial hats and put on their construction hard hats.

Good evening. My name's Jerry Kinsella. I'm the business manager of Local 172, Restoration Steeplejacks. I wish to thank the standing committee on resources development for the opportunity to present the concerns of the plasterers, cement masons and steeplejacks of Ontario.

The Operative Plasterers' and Cement Masons' International Association of the United States and Canada—quite a mouthful—Local 172, Restoration Steeplejacks, headquartered in Metropolitan Toronto, is unique in many ways. Chartered in 1966, we're the only trade-specific local for restoration steeplejacks in North America. Also, we are designated as a provincial local by the Ministry of Labour. Finally, Local 172 is an all-employee unit.

As high-rises became the norm in urban centres, the eventual repair work to these tall buildings and the recognition that these people working 200, 300, 400 feet above

the ground needed to be organized formed the basis for the beginning of Local 172.

Because the restoration industry has grown so quickly through the boom years of the 1980s, there is a large non-union sector. Many non-union contractors in our trade have had the reputation of being, and continue to be, the worst gougers in the construction industry. They not only make their profits through low wages and no benefits for their employees, but they also save money by not instructing their employees in government-required health and safety practices. These non-union contractors also save much money by ignoring the Ontario Occupational Health and Safety Act and regulations for construction projects, the Ontario Employment Standards Act and the Ontario Labour Relations Act.

How can they get away with this? Because of the shortage of safety inspectors and the difficulty of locating job sites, the chance of getting caught is low. Unlike new construction, the nature of our industry lends itself to being very mobile, with relatively low-profile job sites and projects that last, on average, eight weeks. An employer can put two or three swing stages on a pickup truck with all required materials, travel anywhere in the province, set up a project with relative obscurity and be gone in four weeks. The only indication that work is ongoing would be possibly sidewalk hoarding, brick panels or concrete patches removed on a structure's elevation. Otherwise it would look just like window washers on a building.

For this reason it is difficult to locate restoration job sites for either organizing or policing by both the union and government agencies. Because of this unique nature of the business and the fact that Local 172 must organize provincially, it is very difficult to organize under the present regulations.

It is for these reasons that we applaud the Minister of Labour, Bob Mackenzie, and the government of the day for their attempt to amend certain acts concerning collective bargaining and employment. However, we wish to further state that Bill 40 does not go far enough to create an even playing field in the construction industry.

The right of employees to join a trade union of their choice without fear of reprisal does not exist in the construction industry in Ontario. As anyone who has lived in the real world of organizing will testify, workers' lives and livelihood are subject to levels of intimidation and coercion that should not exist in a society such as ours today.

Employees face substantial hurdles when they attempt to organize in the construction industry, where instability of employment can cover up reprisals. Because the numbers of employees fluctuate continuously, it is well known that so-called troublemakers can be quickly eliminated.

Organizers for trade unions will testify to the fact that the first thing many employees will tell them is that they don't want to be seen talking to an organizer or they will be fired. Whether this fear is real or perceived, it still doesn't allow the workers their rights and freedoms. You must bear in mind that this fear is very prevalent today during this time of depression, when there is a such a high unemployment rate in the construction industry.

Employers use many strategies to frustrate the right of employees to organize. There are firings or threats of firings under the guise of layoffs due to lack of work. In our sector of the industry I have seen employers close down job sites, remove the equipment and lay off their employees, only to reopen the project later. I have been denied access to employees on third-party property even when that property was open to the public. I have seen lengthy examination procedures because of some illegal processes by the employer.

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We believe that the proposals in Bill 40 relating to organizing activity do not go far enough and must be strengthened. We support the reinstatement that a trade union should be given a list of names of proposed bargaining unit employees after it has filed an application for certification.

We also support workplace notices of rights and obligations. There must be emphasis placed in these notices that an employer has no way of finding out who signed cards, because, again, that is a great fear of employees. As a matter of fact, many employees fear that an employer will find out how they vote in a secret ballot.

We support the elimination of the \$1.00 requirement when signing cards, because this opens the door for far too many challenges from the employer only for the purpose of delays.

The construction industry is recognized as different from an industrial setting in nearly all of the acts in Ontario. Given the fact that employees are often absent from work due to inclement weather or job scheduling, it is only fair to allow the extra time until the terminal date for the union to submit proof of membership.

There is an atmosphere of paranoia among employees when approached by an organizer because of threats by employers long before a union identifies a company as non-union. These threats usually are directed to the employees when they are hired. To deter any threats by an employer before or during the certification process, there should be substantial penalties attached. We would support and encourage this addition to the bill.

The employers, without a question, play on the paranoia of their employees. This is proven by the amount of petitions or revocations that are disallowed by the board. Petitions or revocations should no longer be allowed. This would not only eliminate an additional opportunity for the employer to coerce its employees directly or indirectly but also shorten the certification process.

Access to third-party property is vital since all work is performed on third-party property. The owners often cooperate with non-union contractors by denying access to organizers even to speak to employees during their own time, ie, before work, during coffee and lunch breaks or after work. This happens even on what we would consider public access property such as shopping malls, office buildings and high-rise apartment buildings.

Surely everyone here is in agreement that there should be a level playing field. Yet when you consider that employers are able to get a hearing scheduled within hours of an application for a cease and desist order while to get a

hearing and a quick decision by the OLRB for a complaint of discipline or discharge related to an organizing drive takes months, it is blatantly unfair. It is totally unacceptable for someone who has been wrongfully stripped of his employment not to be able to have a hearing within a reasonable time. The act should require the hearings to commence within seven days of a filing of a complaint and continue every day until completion, at which time a board order should be issued.

Another area of concern is that more and more projects are being performed by contractors acting as project managers. In turn, all of the actual work is being performed by subcontractors contracted by the owner. This is a method which has become rampant by contractors so that they can circumvent their contractual agreements with the building trade unions.

The act should therefore be amended to take into account this significant change. Subsection 1(4) should include the requirement of an employer that acts as a constructor or manager of construction to ensure that all of its contracting or subcontracting obligations are met on all projects where the company is the constructor or manager. Also, the discretionary powers of the Ontario Labour Relations Board under subsection 1(4) should be removed so that a company is automatically bound to the agreements of its related company.

In conclusion, we commend the Minister of Labour for bringing forth reforms to the Ontario Labour Relations Act. This has been long overdue, but we caution this committee that these reforms do not go far enough to be in tune with the construction industry today.

Workers have had their basic rights to organize and bargain collectively frustrated for decades by laws that have no teeth, that are blatantly in favour of the employers and that are subject to abuse by management and their lawyers as to be nearly useless.

We share the belief that a rebuilt Ontario can be accomplished only through workers' participation. Bill 40 is a step in the right direction.

Those who are pursuing a free trade agenda have little commitment to society, and they are making their opposition to any progressive social reforms well known in an attempt to persuade the government to abandon its commitment to social justice. These critics claim that during this recession it's the wrong time to introduce social reform. What they really mean is no time is a right time, but the right time is now.

Mr Offer: Thank you for your presentation. From your presentation—and I'm really not going to be asking anything specific to the presentation because I'd like to get a fuller appreciation as to the difficulties in your particular line of work—it would seem that in the restoration work it is, firstly, very mobile. Secondly, the work is of a short duration. I would like to get from you, how is it now that organizing is facilitated? Could you share with us some of your experience as to some of the difficulties that are now before your sector?

Mr Kinsella: I could probably give you one example which would probably sum it up. As you are aware, of

course, I'm happy to say it's our members who are working on the Legislative Building here. Most projects aren't like this. They're usually done from swing stages and not industrial scaffolding such as this, and the projects are short-term.

Also, because we're a provincial local—in the industrial, commercial and institutional sector we must organize provincially, not by board areas—what was frustrating, for example, was that last year I had an indication from some workers that they were interested in becoming members of our local and that in the company they were working for they weren't too happy with the way they were being treated. It was getting into the heart of the recession and it seemed like on a monthly basis their wages were being dropped, and they weren't very happy at all. It's, "Either work for this or don't work," you know.

I made an attempt to organize this company. You can understand how difficult it is to even identify job sites, as I described, but I found job sites this company had from London through Kitchener-Waterloo, Cambridge-Guelph, Toronto—of course quite a few—Brockville, Kingston, Belleville and Ottawa. I found 15 job sites. From the total amount of employees on those sites, I got 80% of cards signed. When it came down to a meeting with an officer from the labour relations board, we found out that we only had 51%, because I missed so many job sites.

Of course, by the time I went through this, it was a two- to three-month process. Job sites had closed down, other jobs had opened up. I had been fortunate enough that he transferred some of the employees I had cards signed with to his new job sites. But it came into the fall of the year. Job sites were shutting down and the employees were being laid off. I made the decision, on the advice of our lawyer, to withdraw the application in order not to have a six-month ban put on us.

I'm not going to get into the details of the other frustrating things, like he laid off two employees who were known to be helping me. We filed a section 89 and were successful on that eventually, and there were other things that employers pull.

I think it should be noted that when you look at the Labour Relations Act, it appears on paper that it's very fair and balanced. I'd like to comment that I have been watching these hearings with much interest and I was interested in your opening statement, Mr Offer, that this new legislation would tip the balance. Just to make a comment, I was really wondering where you were coming from. All you'd have to do is come out and try to organize with me one time. With all due respect, sitting in the ivory tower doesn't give you the real world of organizing. It's in favour of the employers. There's no question about it.

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Mrs Cunningham: I have a couple of questions also along the same lines as my colleagues have been asking. In trying to reach these job sites, do people feel—they know that you exist or your local exists. People who work in your profession would know that you exist. If they're unhappy with their employer, do they seek you out?

Mr Kinsella: Normally, yes, I get calls. You must understand that because we are headquartered in the Metropolitan Toronto area, we're well known in the Metropolitan Toronto area. The farther you get away from Toronto, we're less well known. But all your major restoration companies usually are headquartered in this area. This is where the greater amount of work is. So I do get calls. That gives me the job site identification to start from and then it goes from there.

Mrs Cunningham: I was interested when you said you had to seek out and find some 15 job sites. You thought you had some 80% of the cards signed and then, when you came down to make your application, you realized you just had 51%.

Mr Kinsella: The reason for that of course is that in the meantime one or two job sites had shut down, and not all the employees were employed on another job site, plus the fact that you just miss job sites. I'm sure many of you on the committee have walked by restoration job sites and never even known they were there because they were hanging 200 feet above you. If you look, they're so far up they look like window washers.

Mrs Cunningham: I was just interested in the conversation because I think earlier, in Mr Klopp's questioning to the person who owned the restaurants, he said that in his particular area where he worked to supplement his farming income, there wouldn't have been a need for a union because people were happy with their employer. I'm just wondering, in your instance maybe your frustration is that many of these people are happy with their work, that they're happy to have their work. I don't know. I just wondered.

Mr Kinsella: No, I disagree with you.

Mrs Cunningham: I'm not saying that I know anything about this, because quite frankly I don't, but on the other hand, you tell me that you're having to go out and find people. You have to wonder, if they really were unhappy, wouldn't they try to find you?

Mr Kinsella: As I said, not everybody knows about us. The people in the Toronto area, when there are employees working for a company in the Toronto area, they seek me out, but I'm obligated, in order to certify a company, to follow the rules of the Ontario Labour Relations Act, which means I have to organize them provincially. I was trying to cite that example for Mr Offer where this company not only had job sites in the Toronto area but right across the province.

Mrs Cunningham: Over the dinner break I spoke to someone—because I didn't know about this union—who is working in this field who advised me that he would have had the opportunity to join this particular union but didn't feel the need. In fact, his employer and the other singular employer in this particular city are not organized.

They are part of an organization—both of them separately—and have the considerable responsibility of belonging to a profit-sharing group. Both of them are particularly happy in their jobs. I just didn't know how it worked and didn't understand the provincial nature of your union. That's why I wanted to ask you the questions, because

neither of those particular individuals would have wanted to, for the very reason Mr Klopp mentioned, and that was that they were happy to be employed by people and actually share in the profits, which aren't up right now, I must say.

Mr Kinsella: I know.

Mrs Cunningham: On a personal note, I should say that I hope you're particularly successful with your work here. Many of us have wanted to see this take place. I am particularly pleased that it's happening. It's long overdue. This is a very important building to the future of our province and country. Having just returned from an opportunity to look at two or three other legislative buildings, I have to say I'm particularly biased. We really do have a wonderful building.

Mr Ferguson: I want to thank you very much for taking time out from, perhaps, one of your organizing drives to appear before the committee, because I think it's really important that we hear at first hand the problems and difficulties you would experience as an organizer. To reinforce what you said, essentially, although on paper democracy is at work and people do have an option whether they decide to join the trade union of their choice or be represented collectively, in actual reality it just doesn't work that way. There are all kinds of obstacles and all kinds of roadblocks in their path.

I'm wondering if you could share with the committee what amount of money would be spent by a particular company that you might be trying to organize on litigation, if you ever get it that far?

Mr Kinsella: I can only guesstimate how much the company spent.

Mr Ferguson: Maybe you could tell us how much you have spent.

Mr Kinsella: That organizing drive for that one company last year cost the local \$15,000, not including lawyers' costs, which we are all aware can be very expensive. Labour lawyers, be they union or management, usually charge pretty well the same, with maybe the exception of one corporation. It seems to be quite expensive.

It is frustrating, because you know that people out there would like to be organized, but their fear of losing their job—that's the first thing I'm told, "Talk to me after work, down at the coffee shop," or something. "I don't want to be seen talking to you because I'll lose my job."

When that fear is there, it certainly is an indicator that there has been harassment somewhere along the line. I've found, through questioning the members we have organized and those we have failed with, the fact that when they are hired they're told, "If a union comes on a job site, you don't talk to them or you won't be there the next day"—flat out like that.

Mr Ferguson: So a real paranoia sets in. You must be about as welcome as the black plague in some of these places.

Mr Kinsella: I certainly feel that way sometimes. I'm sure, as Ms Cunningham has said, there are happy employees out there and there is no effort by any trade union that will ever get them organized. Those we aren't really interested

in, because they're being treated fairly, and that's what we're after. We're after social justice.

When I said that the contractors in our sector of the construction industry really are terrible—and it's a general statement; there are some good ones that are non-union—its true. The health and safety offices in the Metropolitan Toronto area know me by my voice now because I'm damning these guys all the time.

Mr Ferguson: Do you have any affiliates in the province of Quebec?

Mr Kinsella: We do. It's strictly the cement masons' and plasterers' locals in Quebec.

Mr Ferguson: Could you share with the committee what the experience has been in Quebec with the prohibition against replacement workers?

Mr Kinsella: To be truthful, it's hard to relate that to the construction industry as such. That seems to be more of a concern to the industrial sector, where there's actually a manufactured product.

Mrs Cunningham: Or a service?

Mr Kinsella: Or a service, yes, correct. In the construction industry, our employers don't really seem to go ahead and put in replacement workers. There are some times on construction sites when they'll have another trade try to do the striking trade's work. Again, strikes are really governed by policies of the various building trades councils, and it seems to be working well with the contractors. Each council throughout this province that I am aware of has a picket policy, and the policy is not to shut down the job site, but at the same time to withdraw services and get the point across.

Mr Ferguson: Of course, that recently happened here with the Labourers' International Union of North America, where many job sites continued to operate while they withdrew their services.

The Chair: Mr Kinsella, we thank you, the whole committee thanks you for what was an articulate expression of the interest of your membership. We appreciate your interest in the process and your attendance here this evening.

Mr Kinsella: I would invite anyone to come out on an organizing drive with me.

The Chair: That's an interesting invitation. You never can tell who'll show up.

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AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION

The Chair: Okay, the next participants are the Amalgamated Clothing and Textile Workers Union. Their representatives will please seat themselves at a microphone, tell us their names, their titles, if any, and then proceed with their submissions. Please try to save the second half of the half-hour for discussion.

Ms Pat Sullivan: My name is Pat Sullivan. I'm the manager of the Amalgamated Clothing and Textile Workers Union in Ontario, and I have with me Efre Giacobbo, and he's our research and communications director.

The Amalgamated Clothing and Textile Workers Union is pleased to have the opportunity to present our views and concerns on Bill 40, the government's proposed amendments to the Ontario Labour Relations Act, to the members of the Ontario Legislature's resources development committee.

The Amalgamated Clothing and Textile Workers Union represents approximately 12,000 men and women in the province of Ontario. The large majority of our membership is women and immigrant workers employed in the apparel, textile and auto related industries.

We are not newcomers to the subject of workers' rights and the struggle to obtain those rights. We have advocated for not only the reforms contained in Bill 40, but many others as well. Some have been acted upon by previous governments.

Our credentials for addressing the issue of workers' rights are well established in our province. We believe that the issue of Bill 40 is clearly an issue of workers' rights. In the simplest of terms, the proposed legislation outlines the manner in which workers will be treated in a modern economy and in the context of a democratic society.

We ask the members of this committee to focus on the fundamental issue: granting relief to countless thousands of Ontario workers who suffer abuse at the hands of their employers. We want to be clear. We do not think all employers are the same in their treatment of their employees. Ontario has many employers who treat their workers fairly and with respect. However, the reality is that many employers act in a punitive and negligent manner and do abuse their workers.

The Amalgamated Clothing and Textile Workers Union believes that more needs to be done for those working people in Ontario who need help the most—women, visible minorities and youth—who are increasingly employed in the poorly paid small workplace sectors.

Although we completely support the Ontario Federation of Labour's submission to this committee on Bill 40, there are some issues that we would like to address that are of particular concern to our organization.

Organizing and certification: This section represents the government's response to the substantial hurdles faced by employees when they attempt to obtain trade union representation.

Membership fee eliminated: The \$1 membership fee will no longer have to be paid by an employee in order to become a member for purposes of certification. While this may make it marginally easier for unions to convince workers to become trade union members, its main effect will be to make it easier to establish union membership before the board. We support this proposal as it eliminated one of the objections an employer might use to delay and frustrate a certification application.

Support required for certification: We cannot support the government's position that the amount of membership support a union must have before it is entitled to automatic certification will remain at 55%. We believe that automatic certification be reduced to a simple majority and a representation vote to 35%. At the same time, we cannot help but note that in no other election of a representative in our society is it necessary for the candidate to obtain 40% of

the eligible voters on a nomination paper in order to be guaranteed the right to appear on the ballot.

Petitions and revocations: The time and expense required to oppose a petition results in substantial delay to the certification process. It prolongs litigation, frustration for employees seeking to organize and damage to newly created and often fragile bargaining relationships. Once a worker has signed a membership card, there should be no further scrutiny by the board except in rare cases for fraud and forgery.

It is our view that if a worker wants to decertify, she or he can do so currently under the act by applying to the board in the months just prior to the termination of the collective agreement. We would ask the government to take the necessary further step and eliminate pre-application revocation petitions.

I'd like to give an example here. I know it's not in just our union but in the labour movement in general when you're going before the labour board on certification. I'll give you one example we have just gone through where we have been before the board for a year and a half. We had spent, I know, for the union's cost in excess of \$35,000 in legal costs. There was a petition, and the battle went on at the board. It took us a year and a half and I think about eight dates in hearings. The company changed hands and new ownership came in. Within a month the petitions were withdrawn, the application dropped at the board, and we're now very close, within six weeks, of getting a collective agreement in place.

I think that gives an indication, on the petitions, that it's not necessarily petitioners who may not want a unit to be at their workplace. I probably could spend the next six hours here giving cases where the employers are behind the petitions. It's not necessarily the employees themselves but the company. In this plant, too, that I talked about, we had in excess of 63% of the cards signed. It should have been an automatic certification, and the process of petition slowed that down.

We had a similar case where we had in excess of 55% of the cards signed. It went through the delays of petitions. The board then decided it would give us a vote and we lost the vote. It was only due to the tactics of the employers who had that whole time-delaying process of being able to work on the employees constantly, day in and day out.

The use of scabs: This is surely the most controversial section of the proposed amendments. The use of scabs, and possible prohibitions against this practice, has been the subject of considerable debate. The passing of these amendments should eliminate the emotionally charged and hostile picket line confrontations of the past. It has worked well in the province of Quebec and there is no reason why it can't work here as well.

This being said, Bill 40 also contains significant limitations, notably, the restrictions on performing bargaining unit work apply only to the workplace where a strike is occurring. This means that an employer can still legally shift bargaining unit work to another geographic location. An employer is also allowed under the amendments to contract out bargaining unit work. Supervisors outside the bargaining unit who ordinarily work at the struck location

can perform the work normally done by bargaining unit employees.

I'd like to give you another example which we face in the apparel industry in this country. More and more every day, you're finding more of the employers contracting out the work. We've had in excess of 700 or 800 people in workplaces in the garment industry now down to 60 people. If it hasn't been reduced because of offshore trading or the free trade agreement, now we're also taking it where they're contracting out work.

A lot of it is going to home workers. You can't track it; you can't locate where this work is going. Under this situation of a strike, once that work goes out, there have been cases where the employers take advantage of a strike, contract out to home workers and the plant no longer is in existence. They have a business number, but they no longer manufacture up front.

The grievance arbitration process: These amendments try, for the first time, to deal with the frustrating delays of the existing procedure by establishing strict time limits. In the case of a single arbitrator, a decision shall be rendered within 30 days after completion of the hearing. In the case of a tripartite panel, the board shall give a decision within 60 days after the hearings.

We wholeheartedly support subsection 45(7), which specifies the minister's powers of enforcement to ensure that decisions or reasons are provided without delay.

I sit as a co-chair of the labour relations committee of the Ontario Federation of Labour and we get into a lot of discussions on the whole process under labour law. One of the items we talk about is section 45. When that legislation had come in many years ago, it was to expedite the whole process of arbitration and it hasn't done that at all.

We had one case, as an example, that we had applied for under section 45. It took us two and a half years to get the arbitrator's decision on that case. The arbitrator then gave us a ruling. The company felt the arbitration was in its favour, not the union's. We then had to refer it back to the arbitrator to clarify what his decision was. The arbitrator's decision was in favour of the union. Then the company still maintained that the arbitrator had ruled in its favour. We sent it back to arbitration, again to get another clarification. It took us about four years. In the meantime, the company went bankrupt and the employees never got the money that was owing to them. Some of the employees were owed up into the thousands of dollars. We lost it because of bankruptcy and just because of delays at the board under the legislation.

In conclusion, we would like to take this opportunity to thank the resources development committee for taking the time to hear our views. We trust that our concerns will receive serious consideration in the final writing of this legislation, which is so very important to our members and the people of Ontario. Together with the quick passage of other important legislation such as pay equity and employment equity, we are confident that Ontario will prove to be a better place for everyone to work and live in.

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The Chair: Thank you, Ms Sullivan. Perhaps one of the Conservative caucus members would indicate which one of them wants to ask a question first.

Mr Jackson: I haven't heard any discussions about language difficulties with respect to certification. With what I know of the needle trades in our province, there are a lot of English-as-a-second-language, minority, ethnic, women participating. It has presented itself as some bit of a difficulty in organizing. Yet within the language in the amendments, I don't see that issue being addressed. Although it may deviate from your text, it's an area I'm interested in and I wonder if you could speak to that for a moment.

Ms Sullivan: I don't think it has really any bearing at all on the ethnic origin of the language that a working person has. When they want to be unionized, they can get that through to you. It doesn't matter what language they speak. We have used interpreters like every other union has done out there.

Where the problems come in on the language barrier is when it comes to the whole process before the board. It's the intimidation, the tactics that are put on by the employers. You've got a lot of workers who have English as a second language, the majority of them being women, and they're afraid of reprisal, of losing their jobs. Because their skills are limited, the fear is even greater put on by the company that they're going to lose their job or they're going to lose whatever they have going for them, the machine they work on.

That's one of the things, especially in the apparel industry, that people talk about. "If the company finds out that I'm talking union, they're going to take me off this machine, and it's a good machine," or, "They're going to put me on to one of the cruddy jobs that nobody likes to do, stuffing pillows," or whatever the case.

They can communicate the language. We have a staff that speaks a lot of the languages. We have volunteer organizers, like all other unions. Language is not a barrier when people want to join unions. They can verbalize very clearly what they want. The problem is with the employers using it against the workers.

Mr Jackson: You don't have any difficulties with the labour board currently? The issues I'm concerned about aren't limited to simply certification; they're also in terms of the current process with language difficulties.

Ms Sullivan: But if there are any language barriers if you are at a hearing, they bring interpreters in. That's always been a hearing by the board.

Mr Jackson: What about grievances?

Ms Sullivan: We've never, as a union, had any difficulty with language barriers, whether it be before the board or—

Mr Ward: I'd like to thank you for your presentation. We're hearing basically from the critics of Bill 40 that there is a level playing field as far as perceptions of power are concerned, whether it be from the business standpoint or the employer or from the trade union or the working

people's standpoint—that's in existence today—and that the amendments to Bill 40 would tip that balance towards the working people or the trade unions that represent them.

Yet we're hearing mounting evidence that in fact it is not a level playing field in existence today under the current act, that there are opportunities under the existing act and a reflection that there is power in favour of the employers. Do you feel that under the existing act there is a level playing field or do you feel that the power is in the employer's hands, based on your experience in the trade union movement?

Ms Sullivan: Based on my experience, if there were a level playing field, you wouldn't have a labour board the size we do and there is the time between getting dates of hearings, when you have to wait two and three, four, six months between dates because of the backlog at the labour board. So if there was a level playing field and it was balanced more towards workers, then you wouldn't have the delays that you do at the board. If anybody in this province thinks it's a level playing field and the employers don't play a role in trying to stop the whole certification process, then you end up living in a fool's world.

Mr Ward: What our government is trying to do with Bill 40 is allow a worker or a group of employees to have the choice whether or not to join a trade union. We've heard that under the existing act there are obstacles employers can use to circumvent that choice. You've alluded to some of the obstacles and the fact that the existing membership fee of \$1 can be used by employers during a certification process to inhibit the will of the employees to have a trade union represent them.

I'd appreciate it if you'd give us some examples as far as the obstacles you face pertaining to the membership fee are concerned, as well as the use of petitions, because we're hearing from the critics of Bill 40 that we should not restrict the use of petitions and that everything is fine under the existing act as far as petitions are concerned, yet we're hearing as well from the proponents of Bill 40, the people supporting it, that it is another obstacle employers can use to circumvent the wishes of their employees. Do you have examples as far as the membership and as far as petitions are concerned in your experience with your particular trade union?

Ms Sullivan: In my experience with the dollar, the amount, whether it's \$1 or \$5, is just an amount and you have a figure there. I guess when the loonie came out the labour movement said it was just another tactic to help hurt the labour movement in trying to collect the dollars.

At one time when you were on an organizing campaign you had to collect the \$1 membership fee from the people. If they didn't have the money with them, you had to wait. You had to go back to make another call to get the dollar off them. At the time when we had the paper dollar bill, we used to always write down the serial number, who they gave it to and the date right on the bill so we could verify that this person gave it and when we got it. It's very hard to write on a loonie. There are no numbers. We say it was just another tactic to try to stop us from organizing. The loonie is very difficult.

We've had difficulties in the past when it came to the petitions. We try as an organization, and a lot of the unions will do that, to go in pairs to verify that you did collect the dollar because there have been cases—and I know in other unions they've all had the same problems—where people have paid the dollar, you have the facts before you and how they paid it to you, and they will come forward and say, "I never paid the dollar." They'll try to change your whole campaign.

It's set up out there. We know it goes on. We found out after the fact, when you get certified and you start to become good friends again and all the parties are starting to talk, when they say: "Oh, yes, the company put me up to it. They promised me this if I would say I didn't pay it." Yes, it's a problem, and I think eliminating the dollar is going to eliminate a lot of the problems in that area.

I've been with the union 20 years and I am not aware of any petition that's come before our union in the certification process that the company wasn't behind. After you're certified and you work out your problems and the relationships start to settle down after the long process of getting certified, the facts come out about where the petition came from and the reasons behind it. I'm not privy to anywhere where there was a legitimate petition coming out from the workers themselves; the company has always been behind it, as far as I've been aware. There may be some cases out there, but I'm not aware of them.

Mr Ward: Part of the reason our government feels it's important to update the existing labour act is the changing workforce and workplace since the 1970s. I think 1975 was the last time the act was significantly updated. Your union deals in workplaces that have primarily women in them. Have you seen a change in the workforce and in the workplace since the 1970s?

I have a last question because I'm not sure how much time I have. There seems to be a suggestion by the critics of Bill 40 that if their employees make the tough choice to become unionized, collectively joined together, their business is going to be destroyed and forced into bankruptcy. What are your views, as a representative of the Amalgamated Clothing and Textile Workers Union, and your efforts to work cooperatively with employers, and is that an unfounded fear on the part of the critics of Bill 40 when they suggest that if their employees, for whatever reason, make the decision to unionize, in a very short time they're going to be put out of business?

The first question was workplace/workforce changes and the second one is the cooperative sense you feel is important.

Ms Sullivan: With regard to your first question, dealing primarily in the apparel industry you're dealing not only with women but either visible minorities or immigrant women. I don't think there are that many people in this province or in this country who work there necessarily by choice. The garment industry is not the nicest of places to necessarily work. People don't choose to be at their workplace at 6:30 or 7:00 in the morning and breathe in the dust and the fibres and the horrible working conditions

because they like working there. It's a point of need. The majority of it is financial.

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There are a lot of single parents in this industry who have no skills. They're very limited in entrance into any jobs, since there's always an entry level. When there are no other jobs available, there's nowhere else to go and you have very limited skills, you end up in a garment factory.

They're afraid. They need their paycheque, as low as it may be, because they're in one of the lowest-paying industries out there. They're afraid to do anything if the company comes on to them, because they're going to lose their job and there's nowhere else to go. Basically, they start at rock bottom in the industry and there's nowhere else to go. If they lose their jobs there, they'll be finished in the industry. So there's a big fear, especially by the women out there. They've got to work. These are second incomes or it's the sole income in their family and they don't want to jeopardize losing their job because there's nowhere else for them to go.

In going into an organizing process with the garment industry in particular, we hear this all the time: "If you unionize, we're going to shut down. You're going to put us out of business." We've had more effects from free trade than we've had from union organizations. In fact, a lot of the manufacturers we represent in the garment industry are quite satisfied and happy to have union contracts because it eliminates a lot of problems that they have in dealing with piecework, setting rates and stuff like that. It makes their operation a lot easier by having a union to deal with rather than dealing with individuals.

I'm not aware of any plant shutting down because a union was certified at the workplace. We have a lot of them, especially in the industry, which work under an association, and the conditions are relatively the same in most of the operations anyway. It's not necessarily for wages and other things—that is the norm in most industries—that unions come in. There are other particular items. It's usually health and safety or favouritism and stuff like that which bring in a union into the apparel industry. The wages basically stay the same whether there's a union or no union.

Mr Ron Eddy (Brant-Haldimand): Thank you for your presentation and your answers. It's very educational, I'm finding. In addition to the many criticisms of the amendments that the committee has heard, we've certainly heard a lot of shortcomings not only of the present act but of the amendments themselves, and you've outlined some of those in your presentation.

What do you think is the solution at this point in time? Do you think withdrawing the bill and having it negotiated with employer and union representatives to make some of the changes that you and others are bringing forward would be the proper thing at this time? How do you see proceeding at this time?

Ms Sullivan: Well, I definitely wouldn't want to see the bill withdrawn and trying to rework something that's long overdue. We've been waiting for this for years. To go back to the drawing table—the only thing you could do is

come up with something better than what you've come up with, so I think trying to stop the process and go back is not going to work.

We've got thousands of people out there, literally thousands of women and men, who want to be organized and are afraid to because of reprisals by the employers, the size of their workplaces, whether they're going to be competitive—just the fears that have been out there. To delay it any further—at least there's going to be some hope for people if this legislation goes through. At least they've got some hope of there being justice and dignity in the workplace.

Mr Eddy: And under the present rules, you don't have the same hope?

Ms Sullivan: No, because people are afraid. You have to be out there. I guess I go with the brother before you who said that if you want to get awakened to the real world, come out and organize one day and listen to the fears and the stories that people are telling you out there.

We get contacted. We're not going out there and knocking on doors or standing on corners and at bus stops looking for people to organize. We're constantly getting calls, day in and day out, from people who want to be organized, but there are fears of what's going to happen to them if they talk. They won't give their names. It's like they're afraid that the phones are tapped: Is anybody going to know who they're talking to? There's a big fear out there by people. Now, especially with the recession and the economic climate of this country, they're afraid to speak out in case they lose their job and there's nowhere to go. So to go backwards by coming and trying to rewrite the legislation, I think you're doing an injustice to the men and women of this province.

Mr Offer: I'd like to pick up on some of these questions. I find them quite helpful. You've spoken about the difficulties that have been encountered in the area of organizing, and you've spoken about intimidation and a variety of other things. I think it's fair to say that it's your opinion, for instance, that the elimination of the \$1 membership, the elimination of petitions, the unfair labour practice penalty within the amendment, would meet some of the concerns which you have.

Where is it in the bill, and should we be concerned that there is no legislative requirement in terms of the worker being informed about what an organization drive means to him or her, about what the impact may be? As you say that the bill deals with some of your concerns in the area of intimidation or coercion during an organization, shouldn't the bill, in your opinion, also contain some provisions whereby, through legislation and with penalty, it is made certain that workers' rights are known to them, that the implications, the meaning of what an organizing drive means to them is outlined?

I would like to get that information from you because I am certain that, through your experience, you've gone through all of the organization drives and you've informed workers about what this means to them. Shouldn't we be putting that in legislative form?

Ms Sullivan: No, I don't agree with you, because if you look at what the act states now, under the Employment Standards Act and Labour Relations Act, the person has the right to join the union of their choice, they will not be intimidated, of course, and stuff like this.

People don't buy it, because even though you do have language under the act now that protects a person, that says they have the right to join the union of their choice and that if you have 55% of the cards signed, it's automatic certification and that whole process that's laid out there now, it's not working the way it's written now. So to try to put some more mumbo-jumbo in there to explain what the workers' rights are without clearly stating what the process will be is not going to do anything, because the language that's already there doesn't do it.

We can hand out copies of the act to people in organizing drives, we will have regular meetings with the workers in those workplaces explaining what the act says, but it still doesn't get over the concerns no matter what words you put in there to try to pacify workers; that's what I call it. It's not going to work.

They need very clear language that says, "If I want to join a union and 55% of us, or 50% plus one, say, 'Yes, we want a union,' then the union's in," and we don't have to go through that whole process of the employer deciding that they have the majority even though they have the lesser number of employees that go against the union.

Mr Offer: I thank you for that response, but I was going somewhat beyond that area. Your presentation was all about the difficulties that, in your experience, you have encountered in organizing. In fairness, I think all members of this committee, in the time that we've had these public hearings, have been given examples of where that has taken place. You've also gone forward and said that because of these things this is why you agree with the elimination of the petition and the unfair labour practice sanctions.

Although in your opinion that side has been addressed, is it not necessary—and I am just restating the same question; I apologize for this—that there be something in the legislation which mandates—I know that sounds wrong—that there is a certain minimum level of information that is given to every worker in this province, making it certain that they are informed as to what the impact of any particular drive is? In other words, putting a responsibility on all union organizers, such as the one that you've already met in your experience. Just for the workers, isn't that necessary to do?

Ms Sullivan: I don't think I'm understanding your question, because I think it's there already and it's not working. I guess I'm getting confused as to what your question is. There are already things that are spelled out under legislation on workers' rights, and I don't think that works. Maybe I'm not understanding what your question is.

2030

Mr Efre Giacobbo: I can maybe answer that question. For example, I've gone on organizing drives before and the easiest person I've ever signed was when I

knocked at the person's door and that person said, "You're the guy from the union, right?" and I said, "Yes," and he goes, "All right, give me the card; I'll sign it right away." That's it. He said: "Now I've got to go. I have things to do. I have to go shopping with my wife." That was it. All he wanted to do was to join the union.

My understanding later on was that this person knew what a union was all about and he knew it was necessary for a union to be in the workplace where he was working. So for us to say, "Well, sorry, but I've got to tell you exactly what all this means now," would be just a waste of his time and a waste of my time, and probably also for litigation later on by the employer to see, "Maybe you didn't explain it to this person and you didn't say it to that person." That would just put more hurdles back into the legislation that we don't need.

Mr Offer: I have one further question, if it's permissible. We have had a presentation dealing with the garment trade, but really from the home worker end, which spoke about not only the aspects of this bill, but I think it's fair to say spoke about the need to enhance the provisions of the Employment Standards Act. I know you'll be well aware of that. Could you share with us your position as to whether those individuals who are in the trade should have their rights enhanced through the Employment Standards Act?

Ms Sullivan: Most definitely I would agree that they would. It's really split on the whole situation of home workers, especially in the garment industry. There are some who are working in the home by choice. Because of day care problems, lack of day care, language skills, travelling skills and stuff like that they prefer to work out of their home. But for every job that's being performed in a home, there's somebody in a workplace who's losing that job, and along with that job they're losing they're losing their benefits, their OHIP in most cases, any drug or dental or social welfare benefits, chances or opportunities of pension.

That is lost with home workers and there's nothing coming under this act that's going to protect any of those rights, and in most cases they're not even paying the standard. I could give examples of shops we have where you have set rates for jobs which aren't being paid for with the home workers. They're getting half, in a lot of cases, of what the workplace sites are being paid for their jobs. But they're losing all the rights to their benefits. They have no vacation pay. They have no right to complain. If they complain about the work or the quality, they don't get the jobs coming to them any more.

I guess in that argument I may not necessarily agree with home workers. I understand the need for it, because it's predominantly women working. It's because of the shortage of day care places that they would want to have that. But I think they should have the same rights and dignity those in the workplace have.

The Chair: Mrs Cunningham, you had a brief comment or question?

Mrs Cunningham: I will just put a question. I must admit I have some sympathy for some of the positions

being presented this evening. I know a little bit about the industry and I also know about fair employers and unfair employers.

I'm talking now about the use of replacement workers. I think the committee members who have been open-minded about looking to make changes to this legislation—because there is good and bad in it. You're even saying, "Add to it in some respects," and others are saying, "Take away in certain areas," so if we're here to make a difference and get the best information we can, we have to be particularly open-minded.

I've been persuaded by some industries that this use of replacement workers really is not an advantageous thing for them in any way because they will just lose the business and shut down. The previous presenter was a restaurant person and I have a great deal of sympathy in that regard.

But I don't know enough about the history of your business in Ontario. Have there been a lot of strikes in your industry—just in yours, not the two or three I have other opinions about—and is this something you feel really strongly about? I think this other thing we've been talking about, what I call the cottage industry, is interesting. We could really work something through there. But in this regard, I don't know if there is a history of this in your business.

Ms Sullivan: We represent a large majority of different industries. I just sort of highlighted the apparel, the textile and auto. We have a lot of industries. I can only speak to the apparel, to answer your question on that.

Mrs Cunningham: Yes, that's the one I'm interested in.

Ms Sullivan: In the garment industry, we haven't had a lot of strikes. It seems to go in waves, I guess due to the whole climate of the industry and where it's going. We haven't had a lot of strikes.

It's hard to track, when you have a strike, what's being contracted out and what is being done where. We know it's being done, we know the work is still being performed in a lot of the cases, but it's hard to track. It's no different in bankruptcies. When the companies are going bankrupt, we know the companies are still operating, but we can't find them. It's a hard industry to try and track.

Mrs Cunningham: So you really can't show us where there have been replacement workers.

Ms Sullivan: We could tell you from other companies that are calling and saying, "We're doing your cutting, we're doing this, we're doing that." We have the other unionized shops that are picking up business.

Mrs Cunningham: Because of the strike or just in the day-to-day work?

Ms Sullivan: Because of strikes. But that industry is not an area you get a lot of strikes in.

The Chair: Ms Sullivan and Mr Giacobbo, we thank you for appearing here today on behalf of the Amalgamated Clothing and Textile Workers Union. You've made an effective presentation which has resulted in a great deal of interest being piqued. That's demonstrated by the

questions that were put to you. We thank you and your membership for your interest in this process.

Ms Sullivan: Thank you.

The Chair: We trust you'll keep in touch. Take care, friends.

ONTARIO COALITION FOR BETTER CHILD CARE

The Chair: The next participant is the Ontario Coalition for Better Child Care. Please seat yourselves in front of a microphone. We need your names and your titles. We want to thank you first for coming here on short notice. It was only this morning that you were contacted and you have accommodated the committee by appearing here with such a brief period of notice. We very much appreciate that. Go ahead.

Ms Kerry McCuaig: Not only that, there is a tornado outside.

I'm Kerry McCuaig. I'm the executive director for the Ontario Coalition for Better Child Care. With me is Evelin Napier. She is the coalition's education coordinator.

The brief we've prepared for you is short. It's broken down into three parts. Two of the issues we're going to spend some time with aren't included in the amendments to Bill 40, but we would ask you to bear with us anyway because we think these are important additions which have to be seriously examined in any amendments to labour law reform. The other section deals quite specifically with the amendments that are before you.

The coalition itself has just completed its own public consultation process. We held 12 public meetings in 12 communities across the province, in addition to numerous bilateral and round table discussions, with a broad range of child care providers, consumers and advocates. It was interesting that regardless of the constituency that was there, the discussion focused on the quality and the affordability of child care, and it is precisely these issues which we feel intersect so closely with labour law reform.

Where we have women who are working for wages more than ever before, it has not, however, brought us the economic equality that it was supposed to. The lack of access to affordable, quality child care leaves women in a vulnerable position in the labour market. It leaves us clustered in the traditional female ghettos of clerical, sales and service jobs, where a full 80% of women are employed.

The coalition supports labour law reform because we maintain the right to bargain collectively for wages and working conditions is a fundamental human right in a democratic society. Current labour law, coupled with women's traditional role in the workplace and the lack of social supports, including child care, has either overtly or covertly denied women this right.

Ms Evelin Napier: There are approximately 22,800 child care workers in Ontario working in a variety of settings. Approximately 21,000 work in 2,845 centre-based programs run by municipalities, community colleges, non-profit boards of directors and commercial operators. Another 2,800 work as contract employees for 102 profit and not-for-profit agencies providing home-based child

care. Another 500 work in 185 resource centres funded by the Ministry of Community and Social Services.

Wages in this sector are largely determined by auspices. Qualified staff employed in programs operated by community colleges and municipalities earn on average \$29,000 annually, those in non-profit programs earn \$19,000 to \$21,000 on average and for-profit programs pay staff an average of about \$15,000.

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Almost all child care staff in programs operated by municipalities and community colleges are organized, usually as part of larger bargaining units. Few child care workers outside these auspices are unionized. The low level of unionization has not been for lack of trying, as witnessed by the bitter strike involved in organizing the US-based chain of child care centres, Mini-Skools, by the Ontario Public Service Employees Union. There are legislative impediments to organizing child care workers. Unions are not free to organize only the child care programs operated by multiservice agencies. When dealing with umbrella agencies operating several child care programs in a region, a union is required to organize workers in all the programs.

Attempts to organize private home day care providers have met with long litigation. Agencies argue that the providers are independent operators, even though providers' wages and working conditions are entirely dependent on the agency which contracts their services.

However, the major barrier to organizing child care workers is not legislation; it is the organization and funding of the service. The majority of child care programs are small, independent operations employing under 20 staff. Programs are funded through a combination of provincial government grants and subsidies for low-income families, which are cost-shared at the discretion of municipalities. Child care programs have no control over this income. The only source of income where they do exercise control is in the fees charged to families that pay the full cost of their children's care.

Although child care programs provide an essential human service, they must still operate like a business. Fees are determined by the marketplace. The competition for clients imposes a ceiling on how much individual programs can charge parents and this is where the conflict between child care operators and staff begins. Child care is labour intensive; 85% of a program's budget is spent on staff salaries.

In the absence of public funding, any efforts to improve salaries or benefits must come from increased parents' fees. A centre whose fees are higher than others in the region will not be able to keep clients. Programs strive to keep fees, and consequently staff wages, down in order to remain viable and it's little wonder that programs resist employees' attempts to organize. Child care workers are left to subsidize service through their low wages.

Low wages are not the only burden for child care workers. They affect the quality of child care. Studies have found that staff wages are among the most important indicators of quality care. Despite having higher levels of formal education than the average worker, child care teaching

staff still earn less than half the salary of comparably educated women in other sectors.

Low wages lead, in turn, to high staff turnover. Staff turnover has nearly tripled in the last decade, jumping from 15% in 1977 to 41% in 1988. Low-paid staff were twice as likely to leave their jobs as those earning higher wages. Low wages had a direct impact on the quality of care. Children attending centres with high staff turnover were less competent in language and social development.

Underfunding puts tremendous pressure on child care programs to cut costs in other ways. Some programs are under the impression that the demands of the Day Nurseries Act override those in the Employment Standards Act. Examples abound of workers denied even the basic requirements of lunch and rest breaks. Overtime and vacation regulations are regularly bent or ignored.

The presence of a union in a child care setting not only influences the wages staff receive; it eliminates such working conditions. With union protection, staff are also more likely to report violations of the Day Nurseries Act. It has also been our experience that there has been less need to police the distribution of government funding to child care programs in unionized settings, thereby providing an extra measure of accountability for public funding.

The coalition maintains that the organization of child care workers would provide stability to child care programs by regulating the labour market; that is, by taking wages and working conditions out of competition. But in this sector, as in other small workplaces, regulation of the labour market can only occur in the entire sector or at the regional level.

The coalition supports the inclusion of legislation to facilitate sectoral bargaining in this round of amendments. At the very least, we urge the immediate appointment of a task force on broader-based bargaining strategies, with the mandate to review models of sectoral bargaining which would give a remedy to the most exploited sectors of the workforce.

As a founding member of Women for Labour Law Reform, the Ontario Coalition for Better Child Care supports the thrust of the recommendations. However, it would like to highlight some specific amendments in Bill 40.

Ms McCuaig: Specifically, the right to organize: Under the purpose clause, we feel that it should strongly state and facilitate the right of workers to organize and not put up unnecessary barriers.

The removal of restrictions: It is the opinion of the coalition that removing the restrictions on certain groups of workers to organize was a positive step. However, we'd like to point out that simply removing a ban does not facilitate the organization of those workers. Are domestic workers going to organize on a one-on-one basis? We use this as another example of where broader-based bargaining is essential if women workers are going to be able to exercise the right to organize.

We cannot understand the continued exclusion of agricultural workers. These are largely immigrant and women workers and this really continues an historical injustice in Ontario. It is a last vestige of indentured servitude. We ask

the government to take steps in this round to afford agricultural workers the same democratic rights as extended to other Ontario workers.

The organizing process: We support proposals to provide for quick access to arbitration for unfair discipline or firing during the organizing drive. This is essential. It has been our experience in the child care sector, particularly when you're dealing with small workplaces, that there has been a tendency to fire the main organizer. When you do that, even though later you may get slapped with an OLRB fine or a reprisal, it is nowhere nearly as bad as the price of keeping the union out. Essentially, if you get rid of the main organizer or the main proponent in a small workplace, you get rid of the union.

Picketing and organizing activity in shopping malls and other areas frequented by the public is a positive step forward. It recognizes the changing façade of the workplace. This provision will also level the playing field, which is popular to talk about, recognizing that employers and employees working in shopping malls, office towers and other large complexes should have the same access to information as enjoyed at other work sites.

The proposal to undertake a public education campaign on labour law reform changes we feel is a poor substitute for the recommendation to make the posting of labour law and employment standard regulations mandatory in the workplace. In fact, such a proviso as already exists with health and safety legislation is a much more effective and efficient way of using public dollars and would signal the willingness of employers to work in partnership with their employees.

Determining the bargaining unit: Again, this is a move towards sectoral bargaining, one which we think is positive. The inclusion of part-time workers in units with full-time workers would increase their bargaining clout. It would be of particular advantage to women workers, as would the combining of bargaining units. Particularly in our sector but also in the retail and service sector, this would be of particular benefit to women.

The automatic access to first-contract arbitration and protection against unjust dismissal and discipline would be helpful to workers who are facing very backward employers who use delaying tactics and intimidation to deny employees the right to organize.

While probably the most controversial of the amendments, the section on industrial conflict or the banning of the use of scabs and providing increased job and benefit protection for workers on strike is to the coalition, however, among the most important provisions in the amendments. Such a provision would safeguard children from the real harm inherent in witnessing the tension that inevitably arises when scabs are used. Also, we'd like to note that the quality of program could not possibly be maintained by replacement workers in a strike situation.

We note that the provisions look at maintaining essential services in the service sector. We'd be not at all pleased if we saw child care workers included as essential workers. When strikes have taken place in the child care sector, it's been our experience that child care workers have been most responsible and have worked with parents in order to

minimize disruptions. Strikes in the child care sector are, however, an unmistakable sign that the tensions in the workplace are affecting the quality of programming. Therefore, there has to be that release valve. There has to be that method for in fact addressing the tensions that are there.

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The coalition supports the introduction of successor rights for particularly vulnerable groups of workers who work for contractors, such as food services and cleaning. It would support the extension of this provision to other workers. We think, particularly as child care reform moves ahead in Ontario, it would be useful to have labour law legislation protecting the jobs and working conditions of staff who are going through a transition, to ensure that it's smoother.

The final provision we would make is that in conjunction with labour law reform—this is something we made during the public hearings—the government has to take a serious look at the Employment Standards Act. While we regard the unionization of women workers as very essential and respect the role unions play in our society, we have to also note that for the majority of working women improved employment standards legislation would have a more immediate impact on their lives than unionization.

Right now, there's no doubt that the employment standards legislation isn't working. The time taken to process a complaint now stands at 100 days, up from 70. Victories such as the one at Lark Industries came after five years. Women workers shouldn't have to wait that long for redress for basic justice issues.

We maintain that the reform of the employment standards legislation has to be made a centrepiece of new labour policies which include improved access to unionization, collective bargaining, pay equity and employment equity. We therefore urge the government to undertake a comprehensive review of the Employment Standards Act with the aim of providing workers with a living wage, ending the exploitation of flexible labour, increasing flexibility for workers to accommodate their family responsibilities and providing income and job protection.

We appreciate that your government is under considerable pressure from the business community and the opposition parties to suspend changes to labour law. Yet these are very modest proposals. None of the amendments in Bill 40 goes beyond legislation which exists in other Canadian jurisdictions. It is therefore difficult for us to understand why, as one news headline put it, Ontario business has "gone berserk" over labour law reform.

The coalition concurs with the original discussion paper's description of the changing nature of the workforce. It is apt that the paper acknowledged the growing numbers of women in visible minorities entering the workforce, often into the low-wage sectors of the economy. The coalition very much concurs with the statement that the Ontario Labour Relations Act, as it currently stands, has left these groups behind.

Women have been told that their concerns can't be addressed in good times. They can't be addressed in bad times either. When would be a good time to extend labour

law protection to women workers? The coalition would like to remind the government that it has made a long list of promises to women. Many of these promises are sitting in draft legislation waiting for their turn on the docket. Pay equity has been put on the back burner, as have employment equity and child care reform, while this rather minor piece of legislation dominates legislative discussion. You should all know that our sector will not be understanding if other important legislation is allowed to die because the Legislature is tied up with wrangling.

Women do not reject a working relationship with business. We work with business every day. We do, however, reject the premise that the only way to do business with business is by following its agenda. Women want and need labour reform because it will strengthen our hand in negotiating with business, and the ability to negotiate, we maintain, is imperative in any partnership.

Ms Murdock: Thank you very much, particularly for coming at this late hour, after a long day, no doubt.

I have just a couple of things, starting on page 3, towards the top of the page: "Child care workers are left to subsidize the service through their low wages." I know the argument we're going to get against that proposition is that if workers unionize and wages increase, you're doing yourself out of a job in terms of viability of an organization, particularly in the for-profit sector. How do you respond to that?

Ms McCuaig: There have to be certain justice issues. One is that we're looking at low wages, not only in terms of women subsidizing the system but in terms of the quality of care children receive. Every study indicates that the lower the wages, the worse the quality of care. If we as a society want to provide a level of care to children which is substandard, then we don't pay workers what they're worth. In this sector, you cannot underpay workers. If you do, you're going to pay for it in poor-quality care, so then you have public funding that has gone into a system—because, don't forget, every sector of child care gets some form of public funding—you have public funding going into bad care. We also know that a child is made to pay for bad care throughout its life; therefore, we as a society also pay for the bad care a child receives throughout its life.

This isn't an area you can scrimp on. Child care, we make no bones about it, is expensive. Good-quality child care is expensive. Part of that cost, the biggest part of that cost, 85%, is the wages the workers receive.

Ms Napier: And that's an argument for child care reform. It's not an argument for women workers to continue subsidizing a critically important service with low wages.

Ms Murdock: I'm glad you raised the point about women having the right to form a union if they wish, also particularly the domestic workers. They were in here the other day and made the point very clearly on the broad-based bargaining issue. Certainly I will be looking at that a lot more closely.

I'm glad too that you raised the point on contract employees, although you didn't get much into it. Is there a large number of contract employees within your membership?

Ms McCuaig: Almost all private home child care is contract employees. That means these are women who engage in a contract with the private home day care agency provider. They're considered to be self-employed, although their wages and working conditions and everything else is set by the agency, which is in turn set by funding.

There have been some attempts by OPSEU to organize home child care providers. They have always been met with very long litigation. In some cases it's been won, but the process has been very long and hard and drawn out.

Mr Offer: Thank you for your presentation. I have a question dealing with the difficulties in organization which you have clearly indicated in your presentation, and it runs right through the presentation. But it appears to me from listening to you and reading it—fairly rapidly, I must say; I'll have to go over it again—that the real impediment to effective organization in the child care sector is the fact that you cannot organize on a sectoral basis.

Ms McCuaig: On a centre-by-centre basis.

Mr Offer: Wait now. It says here that you support "the inclusion of legislation to facilitate sectoral bargaining in this round of amendments." That's what I was getting at.

Ms McCuaig: Absolutely. We think that is a major weakness in the bill, that it doesn't address sectoral bargaining at all. The facts showed it's not through lack of trying. You don't organize child care workers on a centre-by-centre basis.

Mr Offer: It just seems to me—again, I'm going to have to read the presentation once more—that the real concerns you have in dealing with the difficulties of organizing have not yet been addressed in Bill 40. Is that correct?

Ms McCuaig: Right.

Mrs Fawcett: Very quickly, you mentioned the agricultural workers and I'm wondering about your thoughts on that, if you had any thoughts on how you take into consideration seasonal work and inclement weather. You're talking about the rights of the workers and I agree with you, but you also have to consider the money farmers get in return for their products and how much they can afford to pay workers and all of those things. One has to agree that we don't want exploitation, yet the facts are that things are rather difficult in the agricultural field right now. Could you expand your thoughts on how you would successfully organize the farm workers?

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Ms McCuaig: When one considers that Ontario and Alberta are the only two jurisdictions which ban agricultural workers from organizing, then I suppose we just look at the other eight provinces and ask how they manage by allowing farm workers to organize. Particularly in British Columbia, where there's a strong organizing drive of agriculture workers, it manages to organize and not undo or undermine the agricultural economy in BC.

Mrs Fawcett: Possibly the subsidies to the farmers are a little different than they are here in Ontario.

Ms McCuaig: I would say there would be nothing the matter with governments responding to what labour conditions are in a sector.

Farmers are small businessmen in much the same way, say, that child care centres are small businesses. If you take the competition, part of what leads to the superexploitation, if you like, of workers is that you can cut corners. If we took the wages of agricultural workers out of competition, then we'd have stability in that sector. What they would know is stable would be their labour cost. We would argue the same thing for the child care sector, that what would in fact give stability to this sector would be one cost for labour, and unionizations would help that.

Mr Jackson: I'm very interested in this brief. I've been reading a lot of briefs from your organization in the last two years. I'm struck by what may appear in my mind at least to be a contradiction.

First of all, what we can agree on is that all day care workers have been grossly underpaid in this province for far too long, regardless of whether they're in the non-profit or the for-profit sector. It's clear the government's moving in a direction to limit, and the numbers of closures indicate we're moving more to non-profit.

When I put your brief in context, it raises some questions in my mind. In all the hearings you and I have attended, you've stressed the importance of parent-run, non-profit corporate boards. It strikes me that we have a little problem here that the non-profit board would negotiate with the union when in fact the model calls for union representation on the board. That's one area I'd appreciate some enlightenment on.

The second is that when you refer to industrial conflicts, when you talk about strikes, you talk about the unhealthy environment, and I can only assume that you're talking to issues which are time-honoured in this province such as work-to-rule, sanctions, reprisals. How does that compromise the strengths of a non-profit board with parent participation when, on the other hand, you're asking those same parents to give to the union the right to strike and bar their child from the program?

Aren't you asking that parent volunteer on the day care board—you and I both know you'd prefer to take it out of this model and have it as a universal service paid for entirely by government, but we're not there yet and we're many years away from that.

Ms McCuaig: We've never said that publicly yet.

Mr Jackson: This transitional period is in an environment where the non-profit centres are becoming more the norm. That's not all that bad. What is it that we're now overlaying this bargaining process in an environment that is very much trying to discover itself and ensure that it maintains a healthy environment because the children are so important, and that they're not disrupted by work-to-rule and reprisals against children of parents who voted the wrong way for a wage package and things of that nature, which are legitimate concerns of parents. Could you discuss that in a little more detail?

Ms McCuaig: Child care workers now have the right to organize. Facilitating the right to organize for child care

workers—and this again goes back to the question I brought up with Ms Fawcett—is by taking wages out of competition. We know, and we've been through this in many of the forums, that what affects quality, what affects what rates are and what affects affordability is: "If I can pay my child care staff less than your child care staff, I can charge lower fees. Therefore, I can get more clients and my centre won't be empty and my centre won't go bankrupt."

This is a concern, I agree with you, Cam, whether you're a for-profit centre or a non-profit centre. It's a business. You take wages out of competition and we have regional bargaining taking place. It's not so hard to do. For some reason we can have 10,000 electricians working all over the province, on this site and that site, and it's perfectly reasonable for them to have one wage rate and for them to have one bargaining unit and for them to argue with a megaboard of contractors. We think that model is quite feasible in the child care sector, even though you do have 2,800 different little operators out there, and that's not likely to change for a long time. You take the wages out of competition, you provide stability to the program.

As for putting any restriction on the democratic right of parent boards, we support restrictions on parent boards. The Day Nurseries Act is full of restrictions on what par-

ent boards can do. What we're more concerned about is when we see parent boards and other operators trying to meet the criteria of the Day Nurseries Act by not meeting the criteria in the Employment Standards Act.

That bothers us far more than any restrictions you would put on child care parents like me who are sitting on a board and saying, "Well, no, I want this done, and I don't care whether or not you get your lunch break." Those sorts of restrictions are on them, like there are all sorts of other restrictions on them. The price of getting public money is that you meet certain regulations and you meet certain quality standards and part of that quality is what you pay workers.

The Chair: I appreciate that answer. Ms McCuaig, Ms Napier, thank you very much for appearing here this evening, and again, our thanks for coming on short notice. You've spoken very effectively on behalf of the Ontario Coalition for Better Child Care. I trust you'll be keeping in touch. Thank you.

We're finished for the day. We'll be back here tomorrow morning at 10 am and we're adjourned until that time. My thanks to the committee members and the staff for their cooperation.

The committee adjourned at 2107.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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- *Cunningham, Dianne (London North/-Nord PC) for Mr Jordan
- *Eddy, Ron (Brant-Haldimand L) for Mr McGuinty
- *Fawcett, Joan M. (Northumberland L) for Mr Conway
- *Ferguson, Will, (Kitchener ND) for Mr Wood
- *Fletcher, Derek (Guelph ND) for Mr Dadamo
- *Jackson, Cameron (Burlington South/-Sud PC) for Mr Turnbull
- *Ward, Brad (Brantford ND) for Mr Waters

*In attendance / présents

Clerk pro tem / Greffier par intérim: Decker, Todd

Staff / Personnel: Anderson, Anne, research officer, Legislative Research Service

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Legislative Assembly of Ontario

Second session, 35th Parliament

Official Report of Debates (Hansard)

Wednesday 12 August 1992

Standing committee on resources development

Labour Relations and
Employment Statute Law
Amendment Act, 1992



Assemblée législative de l'Ontario

Deuxième session, 35^e législature

Journal des débats (Hansard)

Mercredi 12 août 1992

Comité permanent du développement des ressources

Loi de 1992 modifiant des lois
en ce qui a trait aux relations
de travail et à l'emploi

Chair: Peter Kormos
Clerk pro tem: Todd Decker

Président : Peter Kormos
Greffier par intérim : Todd Decker

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 12 August 1992

The committee met at 0959 in room 151.

LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992

LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

The Chair (Mr Peter Kormos): We're resuming our public hearings into Bill 40, amendments to the Ontario Labour Relations Act, at Queen's Park, to which the public is invited. They are entitled and indeed encouraged to attend at Queen's Park today as we sit until 6 o'clock, and tomorrow we're returning from 10 am till 6 o'clock here at Queen's Park.

UNITED STEELWORKERS OF AMERICA, DISTRICT 6

The Chair: The first participant is the United Steelworkers of America, District 6. Gentlemen, please tell us your names and your titles and start with telling us what you want to tell us. We've got half an hour. Please try to save at least the last 15 minutes for exchanges.

Mr Henry Hynd: Will do. Mr Chair and members of the committee, my name is Henry Hynd and I am the director of the Ontario district of the United Steelworkers of America.

Our members in Ontario work in every industry and in every corner of the province. They are more conscious than ever before of the need for effective legislation in the area of labour relations, employment standards, pay equity, employment equity and human rights.

During these times of massive workplace restructuring and reorganization, workers suffer the most. Checking the powerful forces responsible for economic change through collective bargaining is the only way workers can protect themselves from the devastating impact of those forces. Bill 40 is needed to make this possible. That is why we believe that Bill 40 sets the stage for the economic recovery which is awaited by workers across this province.

I believe that labour law reform is an important cornerstone for this recovery, and that harnessing the power of collective bargaining for the least powerful sectors of our society is a major step in the right direction.

As my colleague, Director Leo Gerard, said to you last week, the United Steelworkers of America is capable of cooperating with employers who want to resolve workplace problems in creative and honest ways, but our union is also capable of confrontation. We acknowledge that this is not a constructive way to resolve workplace problems, but very often we do not select the approach that we must

take vis-à-vis employers. Our direction is often dictated by those on the other side of the table.

I am confident that when these reforms are passed and we review this period in the history of Ontario, even the harshest critics of Bill 40 will acknowledge that it was a watershed piece of legislation for positive developments in Ontario's labour relations climate.

This union is also capable of consultation. We have consulted with the minister and with the government on a number of issues. We participate in government consultation processes in a variety of ministries. We have done this for many decades because we think that it is important for our members' voices to be heard so that the government can test public policy ideas with representatives of workers.

We are weary, though, of a process that is not designed to achieve the best kind of legislation and that is being used by some groups as an opportunity to attack the very core of the union movement. I am alarmed at the short-sighted and hysterical reaction of many organized business groups to these reforms and to Bill 40. I'm alarmed because the criticism lacks content. I am alarmed because those who criticize blindly do play an important role in the labour relations climate in Ontario. I am suspicious of the motive of the groups who attack Bill 40, because their criticism lacks substance and they make no creative suggestions or positive contributions to the process.

My message to this committee is that my union supports Bill 40. We do not think it answers every problem; we wanted it to go much further. There are a number of areas where we believe the bill is deficient, where it appears that the government has compromised to satisfy some of its harshest critics. But we know that sometimes a compromise makes the best public policy and that it is important for a degree of consensus to emerge so that a new legislative departure is workable.

I do not propose to review with you all of the bill's deficiencies, nor do I propose to take you through the bill clause-by-clause and analyse every problem the bill seeks to resolve and how and why the bill is likely to succeed. In the remaining time I have before your questions, I want to talk about two important features of Bill 40. The first is the amendment with respect to security guards, and the second involves amendments impacting on joining unions.

The United Steelworkers of America has been in the forefront of seeking amendments to the security guard provisions of the Labour Relations Act for more than a decade. We have never understood why Ontario should have legislation that restricts the ability of a security guard to join the union of his or her choice. These limitations do not exist in other Canadian provinces. Their absence has not created any difficulties in Quebec, where more than 10,000 security guards are organized, or in any other jurisdiction,

including the federal jurisdiction. Why then, we have asked ourselves, does the law require security guards to be represented by unions that accept into membership only security guards? Why can't general workers' unions, like the United Steelworkers of America, represent security guards along with other employees in the same bargaining unit or, where there is a conflict, in a separate bargaining unit?

We have never heard a convincing response to this question. Some employers say that security guards should not be in the same union because they are asked to monitor other workers and a common union would put these guards in an unenviable conflict of interest. Surely the same argument would apply in the context of supervisors, but in a number of jurisdictions, notably the federal jurisdiction, supervisors can be represented by the same union that represents plant and/or office workers as long as the supervisors are in their own bargaining unit. The policy rationale for this is that where there is a clear conflict, as between front-line employees and supervisors, for example, it is important that collective bargaining take place at separate tables and that separate collective agreements govern. Isn't that the degree of separateness required for security guards?

Our union did not just sit back and criticize the security guard provisions in the Labour Relations Act. With the advent of the Canadian Charter of Rights and Freedoms, we were hopeful that the freedom of association provisions would cause section 12 of the Ontario Labour Relations Act to be declared inconsistent with the charter. In an effort to expose the limitations in section 12, we organized thousands of security guards in Ontario. We told them about the limitations in section 12. We told them there was a chance that section 12 would prevent us from being certified as their bargaining agent even though they had selected us. We organized guards in Toronto, Ottawa, Windsor, Hamilton, London, Cambridge, Thunder Bay, Kingston and elsewhere. We told these brave security guards that they would have to be patient, because the process of having a law declared unconstitutional, including the lengthy appellate process that was possible, could take several years, and we were right.

Following a lengthy one-year battle at the Ontario Labour Relations Board, that board determined that section 12 did not violate the charter. The board reasoned that the Canadian charter does not protect the right to be certified; the charter only protects the right to associate with others in an organization. According to the board, nothing in the Labour Relations Act prohibited guards from joining the United Steelworkers of America; all the statute did was prohibit the Ontario Labour Relations Board from certifying the trade union as the bargaining agent for such employees. This was cold comfort to the thousands of security guards who had waited. Any doubt about the correctness of this decision was put to bed by the subsequent decision of the Supreme Court of Canada in the Public Institute case.

So where were we left? We could abandon security guards to other unions, unions that did not have the scope, resources, presence in regional communities and other benefits afforded to members of the United Steelworkers

of America, or we could continue to seek to have section 12 amended. You will not be surprised that we chose the latter.

The amendments set forth in Bill 40 do nothing more than bring the security guard provisions in the Labour Relations Act into line with other jurisdictions in Canada. They will permit security guards to be represented by a union chosen by security guards. They will permit employers to argue that security guards should be in a separate bargaining unit. The legislation is careful and well-thought-out. It will not undermine the ability of security guards to function either as guards assigned to protect property or as guards assigned to monitor other employees.

I applaud the government for introducing the amendments to section 12. We are hopeful that the long delays have not shaken the resolve of security guards to make the decision to join the union of their choice as their certified bargaining agent.

I want to announce to security guards, their employers and security guard agencies that the United Steelworkers of America will be organizing security guards throughout Ontario as soon as this bill is given royal assent. We do not intend to stop. We do not intend to hesitate. We intend to bring the rights of trade unionism to security guards across the province. We will offer security guards the benefits of union representation and the benefits which collective bargaining can bring to their work lives and to their home lives.

I want to make three points about organizing, because I think so much has been said that there is little I can add to constructively assist you in your considerations of the many sections of Bill 40 that touch upon the ability of employees to join unions.

First, unions bring democracy to the workplace because they permit workers to be actively involved and present in decisions which impact on their lives. But our view of democracy goes beyond the question of how unions come to represent workers. In the context of the amendments to the Labour Relations Act, it is important for this committee to understand that the workplace is very different from any other place. In the workplace, employees are subject to special perils and special controls that do not impact on democracy elsewhere; for example, in the context of local, provincial or federal elections.

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This unique environment has been recognized for at least 30 years as presenting a basis for the development of a certification process which does not necessarily require a vote of employees. Indeed, in each of the past three decades, the Ontario Labour Relations Board has made it clear that the workplace has to be regarded with suspicion and that the free expression of employees' wishes cannot be ascertained by adhering to our commonplace practice of taking a vote.

I have cited here three examples and I hope the committee takes the time to read them; they're very important. Many members of the committee may be already aware of them.

Finally, in 1980, in the leading case of Fuller's Restaurant, the Ontario Labour Relations Board, 1289, reiterates

the concern it must have in the context of union certification campaigns which culminate in a vote as follows:

"Again having regard to the responsive nature of the employer/employee relationship, this board has held that a 'captive audience' meeting held by management during the course of a union organizing campaign may serve to thwart free expression. This is so where the employer, relying upon his position of economic dominance, uses the employee meeting to threaten, coerce, or create unjustified concerns in the minds of his employees with respect to job security."

The fact is that the employer functions in a position of economic dominance in the workplace. This role of economic domination is unique to the workplace. It impacts on democracy in the workplace. It cannot be denied that this impacts on the reliability of workplace votes. In our view, the most effective way of ascertaining whether workers wish to be in a union is to examine whether or not they have freely signed cards to join the union.

Some would say, and I've read, that some members of this committee have suggested that unions should not be certified where intimidation, coercion or other improper measures are brought to bear during the collection of cards; I agree. There are protections set forth in the unfair labour practice provisions of the Ontario Labour Relations Act to make sure that where there are such tactics, they will be exposed. Unions that have engaged in such tactics will suffer the consequences, including a refusal to receive an automatic certificate.

I am sure that members of the committee have examined the board reports carefully and will agree with me that there are very few cases where unions have engaged in improper strategies and intimidating tactics. The fact is that employer unfair labour practices during organizing campaigns are rampant and widespread. The reported monthly decisions of the Ontario Labour Relations Board stand as a permanent reminder that engaging in unfair labour practices is basically the rule in Ontario, not the exception.

Bill 40 makes certain fundamental changes that should deter employers from engaging in unfair labour practices. It assures that unfair labour practice discharge cases will be dealt with quickly and that the chill of firing the union organizer will no longer successfully terminate the organizing campaign. No longer will unscrupulous employers be able to rely on quick firings of pro-union employees to defeat union certification. Speedy unlawful conduct can no longer be victorious in defeating the union, a result never intended by the Legislature.

Bill 40 provides that employees covered by a certificate will benefit from just cause immediately after their union is certified. There will no longer be a need to wait the many months and sometimes years it takes for the first agreement to be achieved. This removes one of the primary obstacles—or benefits, if you're an employer so inclined—to speedy resolution of first agreements. Until this amendment, employers could continue to unilaterally exercise their authority within the workplace without being subject to the just cause review of an arbitrator. Bill 40 closes that loophole.

Important, Bill 40 gets rid of the expensive and wasteful litigation that has been taking place at the Ontario Labour Relations Board since the first-agreement arbitration access provisions were enacted by the previous government.

Finally, it will be possible for parties who are unable to resolve issues in the context of collective bargaining for a first agreement to have matters resolved at interest arbitration. No longer will it be essential for them to prove wrongdoing before being granted access to first-agreement arbitration.

Some say that this will impose a chill on first-agreement bargaining. All I can say in response is that first-agreement collective bargaining is precarious and fragile and that often parties need the presence, or at least the threat of the presence, of a third-party arbitrator to come to terms with the reality that they're engaged in a new way of determining workplace practices, rules and terms of employment.

I want to say just one more thing in connection with the first-agreement arbitration, and that's about anti-union petitions. No single development in Ontario labour law has been more harmful to the process of collective bargaining, and has undermined the ability of trade unions and their employees to develop creative and workable solutions during the first couple of collective agreements, than the institutionalization of anti-union petitions filed after the application date.

These petitions emerge, miraculously, right after a union applies for certification. Usually armed with support from well over 55% of employees in the bargaining unit, the trade union applicant finds itself confronted with a group of bargaining unit employees who have decided to file statements of desire with the board, revoking their support for the union.

The overwhelming number of these anti-union petitions are found by the board to be either not voluntary or poisoned by employer involvement. All of these are disregarded when the board determines the level of membership support. However, the effect of this process has been disastrous from a labour relations and productivity point of view. I am not only referring to the lengthy and expensive litigation. That is bad enough.

Even after the union is certified, this anti-union group remains active. It seeks to destabilize and undermine the advocacy of the trade union in the workplace, serving as a kind of institutionalized opposition doing the employer's bidding from within the bargaining unit.

The presence of this group undermines confidence, defeats the ability of the union to confer with its own members and serves as a permanent employer vehicle to seek to control and influence the bargaining unit employees. The whole process is accomplished by deliberately setting employees against one another.

Eliminating petitions is a good development. It will streamline the certification process by defeating the opportunity for employers to involve themselves in unlawful anti-union activity by making use of bargaining unit employees as its pawns during organizing campaigns. It will generally promote a greater degree of unity within the

workplace following certification so the business of collective bargaining can take place without the baggage of an anti-union fight.

Most important, the elimination of petitions means that it will be possible for the board to determine, finally, whether the union had more than 55% support of employees in the bargaining unit on the application date.

You should bear in mind that the test under Bill 40 is not at all like the test of victory for each one of you who ran for provincial election. All you needed was more votes than your opponent. To be certified, a union has to have more than 55% support from the entire bargaining unit. To those who claim that the automatic certification is somehow not democratic, they should take a careful look at the method by which they have been elected.

Mr Chair and members of the committee, there is so much more that can be said about Bill 40. There are so many details and so many small changes that will benefit working people in Ontario. There is also so much left to be done for the working poor, the marginalized, the exploited service sectors, immigrant women—in short, for those who are not likely to enjoy the benefits of collective bargaining, even under bill 40.

Let's not kid ourselves. The amendments which open the act to certain groups and the changes with respect to part-time employees will have some impact, but the fact is that in many sectors of the Ontario economy where largely women and visible minorities are employed, the benefits of collective bargaining will not come quickly.

The Wagner Act system of union certification and representation was not designed for them, even with the Bill 40 improvements. We must develop an alternative system which harnesses collective bargaining for the greater good, which brings the benefits of our society to the most vulnerable and least privileged. That is why I think we have got to examine broader-based bargaining structures. We have to look carefully at what is possible and measure our capabilities and abilities with what others have tried to achieve in their societies. We have been calling for a task force on broader-based bargaining for a long time. It would appear that our calls have fallen on deaf ears.

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But we will not be silenced even by our friends in government. There can be no doubt that we must examine structures beyond the single workplace for representation of workers and employers for the purpose of developing sectoral employment standards using a collective bargaining model.

We cannot tinker with a mini-study. The task force must undertake a serious and extensive examination that could result in fundamental changes in our employment standards system and harness collective bargaining as a labour market strategy for the hundreds of thousands who fall outside the traditional sectors where trade union density is not significant. I ask you, Mr Chair and the members of this committee, to call for a task force on broader-based bargaining and to urge the minister to set up such a task force without delay.

I could go on and on, but I think it is important to try to respond to some of your questions, so I will stop here, leaving a great deal still unsaid.

Mrs Elizabeth Witmer (Waterloo North): Thank you very much, Mr Hynd. We appreciate the perspective you've presented this morning.

You mention here on page 9 that "unions are going to bring democracy to the workplace because they permit workers to be actively involved and present in decisions which impact on their lives." Are you saying that workers do not have that opportunity if they're not unionized, Mr Hynd?

Mr Hynd: I don't know many non-union employers who solicit the view of their employees about decisions they're going to make in the workplace.

Mrs Witmer: I guess I would tell you that in reviewing my mail today—I've been away for several days on personal family business—I received a letter from the employees of the hardware store in St Jacobs, indicating that they do feel very much a part of the workplace and are able to communicate with their employer. They are not looking for union involvement. I think we have to be careful, because I think there are many employers in this province who do have a very good workplace environment where there is communication that takes place. We need to make sure that we allow all workers to make that decision very freely.

You mentioned here as well—

Mr Hynd: Before you leave that, I didn't suggest anywhere in my brief that workers wouldn't make that decision. The workers in that hardware store would make a decision whether or not to belong to a union. If they're quite satisfied with their employment relationship and they do have a good relationship with that employer, they probably won't want to belong to a union.

Mrs Witmer: No, that's certainly what they indicated.

Mr Hynd: So we haven't indicated anything different in our submission now.

Mrs Witmer: Right. I think we need to be—

Mr Hynd: For those employers who are considered good employers by their employees, I doubt that union is going to be successful in organizing.

Mrs Witmer: I think we need to be careful and understand that there are employers today who do have a very strong organization and are very supportive of their employees.

You mention here that you're looking for a task force on broader-based bargaining. What type of task force would you be looking for?

Mr Hynd: We want a task force to look at those who are disenfranchised from our society.

Mrs Witmer: Who would be part of that task force then, Mr Hynd?

Mr Hynd: I wasn't finished. I understand that yesterday or the day before you had some testimony here about workers in Ontario who are paid way below the minimum wage. They are working in their homes, as an example. I think the first thing we have to discover is in fact to what

extent people are disenfranchised, so we can look at the non-union sector of our economy.

Mrs Witmer: But who would sit on the task force?

Mr Hynd: I would suggest who should sit on the task force would be the government's decision. I would think that a legitimate task force would contain people from all segments of the community: the labour movement, the good employer, people from government and civil servants. The task force would have to be one that looked extensively at our community.

The Chair: Thank you. We have to move on to Ms Murdock.

Mrs Witmer: I have one point, Mr Kormos—

The Chair: I know you do, Ms Witmer, but—

Mrs Witmer: Just in response to the question.

The Chair:—you've already used some of the government caucus's time. If they want to relinquish that time to you—Mr Ferguson? Fine. Ms Witmer, go ahead; you still have Mr Ferguson's time.

Mrs Witmer: I was just going to say if you support the task force with labour and business and government, I guess you would have supported the tripartite process for arriving at Bill 40, which we unfortunately didn't have.

Mr Will Ferguson (Kitchener): I thought it was my time.

Mr Hynd: No. The difficulty that you're having is that we already have a Labour Relations Act in place. The Labour Relations Act amendments only bring the Ontario Labour Relations Act up to speed and only partially. There's much more that we would like to see in the Ontario Labour Relations Act that isn't there, so the tripartite thing, I didn't suggest that. The task force would be one that the government would decide, I suggested, but a task force that contained elements of the community would be the best task force we could have.

This legislation, as far as I'm concerned, has had the most extensive discussion in the province than any piece of legislation has ever had—more discussion, more news coverage, more hearings, and I've attended a lot.

The Chair: Go ahead, Mr Ferguson.

Mr Ferguson: Thank you very much. Welcome, gentlemen. I appreciate your appearing before the committee this morning.

I want to ask you about the suggestion that some unions coerce or intimidate people into signing cards. Yesterday, you may know, we had a few groups that appeared and that seemed to be a general theme for some of the representatives of the business community; although I can tell you that when we asked for specific examples where this might have happened, nobody could give us one.

In your brief you suggested there is provision within the Ontario Labour Relations Act to make sure those sorts of tactics will be exposed and will be dealt with. I'm just wondering if you could expand on that. I think it would be helpful for the committee to not only understand, but also appreciate that there is provision in the act to deal with that.

Mr Hynd: I can only say I would be naïve to suggest that some organizers don't try to intimidate people. Some people feel intimidated when you knock on their door to vote for Will Ferguson in the next election.

Mr Ferguson: Not very many. Can we strike that example from the record?

Mr Hynd: The fact is that the labour relations board clearly identifies the number of times it's found any guilty party. Intimidation by employers is rampant in this province; intimidation by unions is very seldom. I know we're portrayed in the media and by a lot of people in government that we're hoods, that we're overpaid, that we're union bosses, that we're not really representatives of workers and that we don't have workers' best interests at heart. But the fact is that there's no real proof. That's all hogwash as far as I'm concerned.

Mr Ferguson: Unfortunately, I think you rank somewhere around politicians when it comes to the general public.

My second question is essentially this: As you may be well aware, in February of this year Statistics Canada reported that there would be \$45-billion worth of new investment in Canada. Ontario received about \$20 billion of that new investment, which works out to somewhere between 40% and 45% of the new investment. We've also heard on a continual basis—again, not from all but from some in the business community—that investment in the province of Ontario may come to a grinding halt because we decide to change a couple of labour laws.

I want to ask you gentlemen—obviously you represent a host of employees across this province in various sectors—are you at all aware of any of the companies you deal with that are planning to either close their doors or move if we decide to proceed with these labour law changes?

Mr Hynd: I think that any of the impact on closure of plants has certainly had very little to do with the discussion behind Bill 40. The fact is that if there was any substance to that, the provinces that would really have a large manufacturing base would have been all the other provinces in Canada except Ontario.

Ontario had the highest level of manufacturing of any province in Canada. It was the most highly organized province in Canada. So unionization doesn't chase employers away. We've got a highly skilled workforce in Ontario. Unfortunately, thousands and thousands of them are unemployed. That's what draws employers to Ontario: a highly skilled workforce, good access, good transportation and good infrastructure.

1030

Mr Steven Offer (Mississauga North): Thank you for your presentation. I want to ask questions around the issue of security guards. I raise this point because it's the first point you've spoken to. On page 8, you've used this opportunity to make the announcement:

"The United Steelworkers of America will be organizing security guards throughout Ontario as soon as this bill is given royal assent. We do not intend to stop. We do not

intend to hesitate. We intend to bring the rights of trade unionism to security guards across the province."

That's from your presentation.

On this one issue we have heard from security guard unions that they have a different type of function. As far as trade unionism and security guards are concerned, it's not a matter of whether security guards can or cannot join, because they can join, but right now they can only join a union that represents just security guards. So in your presentation, when you say you're bringing trade unionism to security guards, I would take some issue with that, based on what I've heard from trade unions for security guards. It's there now, but the trade union of security guards is exclusive.

We have heard from these security guards that their job is unique in that their function is to monitor employees, sometimes to search employees. Their job is to monitor and protect property. They have a concern that to allow this—in other words, as per your announcement, being unionized by your organization—does put them in a very difficult position. It does affect the way in which they will be able to do their job: in essence, monitoring employees and protecting and preserving property.

My question to you is: How do you respond to those security guards who have come before this committee with that concern on this bill, and to their unions which have echoed the same concern?

Mr Hynd: Do you know the name of the people who have appeared before you? If you know the name, it would be helpful. Do you know the name of the association? The American guards' association?

Mr Offer: I think that's a valid question. I don't want to interrupt, but you have asked the question. I'm responding to the International Union, United Plant Guard Workers of America.

The Chair: Who appeared here with their lawyer, David Wright.

Mr Hynd: That union represents roughly 2,000 employees in Ontario. During the campaign we engaged in when we were trying to organize security guards, prior to the decision made by the labour relations board and the Supreme Court, we organized over 5,000 guards in one shot.

Guards want to belong to a good union. The difference is, guards have a choice. They can join that association if they wish or they can join the United Steelworkers. We're confident they're going to join the United Steelworkers of America.

The other point you make with respect to the special status of guards, nobody spies on workers more than front-line supervisors. Supervisors have the right to search employees in a non-union plant. They have the right to do anything they can to employees. So security guards don't perform a function that isn't performed by supervisors. Supervisors are allowed to be organized. If supervisors can belong to the United Steelworkers of America, as they did in Elliot Lake, why can't security guards belong to the United Steelworkers of America if that's the union of the security guards' choice?

Mr Offer: Time is short, but I'm going to have to restate my question, because it's clear now from your response that it's not a question of bringing unions to security guards. They're already there. The matter which you've brought forward is their choice. But what do you say to those security guards who are saying: "Don't do this to us. This is putting us in a bad position"?

Mr Hynd: If a security guard says to me, "Don't do this," he won't sign a card, then I'll have to go away.

The Chair: Thank you. I've got to thank the United Steelworkers of America, District 6, and you, gentlemen, for appearing here this morning and presenting the views of steelworkers, a significant constituency here in the province. We appreciate your taking the time, we appreciate your interest, and we trust that you'll be keeping in touch. Take care.

WESTROC INDUSTRIES LTD

The Chair: The next participant is Westroc Industries Ltd. Please come and have a seat in front of a microphone. Tell us who you are and what your status is with Westroc. Try to save the last 15 minutes of the half-hour for questions and exchange.

Mr Marc Farrell: Good morning. My name is Marc Farrell. I'm with Westroc Industries and I'm the corporate manager of human resources.

First, I'd like to thank you for the opportunity of addressing you today in relation to Bill 40. While I'm here as a representative of Westroc Industries, I'm also here as a concerned citizen of this province.

For your information, Westroc Industries is an integrated manufacturer and supplier of gypsum-related products such as wallboard, finishing products and wall systems. The company employs over 500 people across Canada in six plants in British Columbia, Alberta, Manitoba, Ontario and Quebec. It also owns and operates two mines. Approximately 350 of our employees are hourly paid, and over 95% are unionized.

Our concern over Bill 40 centres around two areas. First, the bill will have a negative impact on business investment in Ontario. In addition, there are certain clauses which will detract from Westroc's ability to compete effectively within the North American marketplace.

Westroc, and indeed the entire industry, have been extremely hard hit during this recession. Our difficulties have been compounded by an oversupply situation in North America. As a result, prices have declined to 1979 levels, and US companies are more aggressively selling product in the Canadian marketplace. Even once the recession ends, competing within North America will be more difficult than in the past.

At Westroc, we are making significant new investments in upgrading our workforce, in quality service initiatives and in establishing closer partnerships with our employees. All of these, we believe, are essential to ensuring long-term competitiveness.

For example, at our mine location near Drumbo, Ontario, our employees have been working actively with us to improve our competitiveness. Over the last six months, both groups have been cooperating closely together, and

this has resulted in a 25% reduction in our mining costs. This has improved our ability to compete and made this mining operation more viable, increasing job security for everyone.

This is an example to us of labour-management co-operation. It arose from a need to be competitive, but also from the realization that these gains could not be achieved separately. It was in everyone's interest to improve competitiveness. This initiative was not legislated, and we believe these kinds of initiatives will increase as employees and business realize that it is in their mutual interest to work more closely together.

However, Bill 40 in its present form will not improve investor confidence or preserve jobs in Ontario. This bill has polarized the various interested groups and unfortunately is being portrayed in the media as a bill which would have a negative impact on investor confidence and make competition in Ontario more difficult. Even if these are only perceptions, the reality is that investment decisions are often affected by perceptions.

If choices need to be made between investing in Ontario and elsewhere, we will lose investment possibilities if we are seen as an area where the risks are greater or as a province with more onerous rules and regulations. We must be concerned in this province with not only our own public policies, but also how our policies compare with other parts of the country and indeed North America.

Further changes are required in Bill 40, changes which need to be supported by business, labour and government so that we can send a signal to the investment community that all groups are committed to making Ontario a worthwhile place to invest business dollars.

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We believe Bill 40 will also have a negative impact on the collective bargaining process, which is the basis of our industrial relations system. The collective bargaining process is a time-tested process which enables both parties to reach an agreement. In Ontario, over 95% of disputes are solved through the collective bargaining process, even though this number still needs to be improved significantly. However, even with 95% of disputes being resolved, the World Competitiveness Report states:

"Canada ranks 16th [of 23 industrial countries] in workdays per 1,000 people lost to industrial disputes, 16th in the extent to which industrial relations are conducive to labour peace and 19th in the extent to which unions and management work together to their mutual benefit."

We are concerned that certain provisions of Bill 40 will not foster greater labour-management cooperation, and I'd like to focus on several clauses.

First, the bill would not only restrict replacement employees from the outside, but goes so far as to prohibit the use of existing employees from other locations, including management and supervisory employees. This provision has a major impact on the whole concept of collective bargaining. Collective bargaining is a dynamic exercise between the employer and the union in which both groups use the appropriate leverage to reach the best possible agreement in the circumstances. Eliminating this leverage and the possibility that a company may continue to operate

during a strike may cause employees to not reassess their position and may result in not engaging in serious collective bargaining.

From Westroc's perspective, if a strike occurred at our plant in Ontario, we would have very few options. We could attempt to partially service our market by production from other plants. However, this would be very costly and we could not meet all of the requirements, which would result in lost market share. More likely, without this leverage we would probably settle with higher wage settlements than would be appropriate for the economic climate. In the long run, this would hurt our competitive position and jeopardize jobs in the future. It's very important in collective bargaining that there be equal leverage for both sides and that both the company and the union have sufficient pressure to reach an agreement through collective bargaining.

Second, Bill 40 mandates certain collective agreement provisions in spite of whether they were negotiated by the parties. In the case of a plant closure or a group layoff of more than 50, Bill 40 could direct the parties to negotiate an adjustment plan in spite of the fact that notice requirements are covered adequately within the Employment Standards Act.

Another area of concern is that Bill 40 tips the balance of power so that the rights of individuals and employers are abridged. A specific issue is the removal of the cooling-off provision, where employees who have signed a membership card can sign a petition opting out of membership. The bill would deny petitions or other evidence that an employee has changed his or her mind after the union has filed for certification. The new provisions on replacement workers that I mentioned earlier not only limit the company's ability to operate but remove the individual freedom to choose to work, thus disadvantaging two of the three parties to the agreement.

In summary, I agree that a cohesive, positive relationship between management and labour is not only desirable but critical to the success of our province's industries and people. Unfortunately, there are flaws within Bill 40 that threaten that relationship, which has been improving over time. We cannot afford to take a step backwards to bygone days of confrontation and distrust. We must look to craft a partnership that creates successful industries so that all employees, whether management or labour, can also succeed.

I am pleased that all sides are providing input and hope that a balanced bill will be the result. There are high expectations that the work of the Premier's Labour-Management Advisory Committee will have a significant impact on this legislation. It is an important forum for the stakeholders of business, labour and government to review these proposals and to reach agreement on balanced reforms to Ontario's labour legislation.

Thank you again for the opportunity to address you today.

The Vice-Chair (Mr Bob Huget): Thank you very much. Questions? Mr Ward, you have about seven minutes.

Mr Brad Ward (Brantford): I'd like to thank you for taking the time to come down and make us aware of

Westroc Industries Ltd's views concerning Bill 40. I'm pleased to see that you recognize the need to update the labour laws as they are in existence today, as I think the vast majority of presenters have also recognized.

You add greater evidence by stating, "Canada ranks 16th [of 23 industrial countries] in workdays per 1,000 people lost to industrial disputes, 16th in the extent to which industrial relations are conducive to labour peace and 19th in the extent to which unions and management work together to their mutual benefit."

Obviously, what we have in existence today isn't working and we have to look at new ways to do things to meet the economic challenges we're facing today.

You made a statement that investment will be hurt in Ontario if Bill 40 proceeds. When I look at my community of Brantford, we've had tough times. We never really recovered from the last recession, but we've had investment since labour law reform has been discussed in the province. I can refer to a German company, BASF, which recently announced a \$6-million upgrading of its plant in Brantford. The fact that we have lost plants I think can be shown to be due to mismanagement, receivership, bankruptcies or rationalization of the corporation—Maple Leaf is one; Koehring Waterous is another—but nothing to do with labour reform.

Critics of Bill 40 constantly mention the fact that we are losing investment. I hope you don't refer to that Ernst and Young report. That hasn't much credibility in the minds of this committee, I think, because it was based on opinion. I hope you're not referring to that when you make the statement that investment is going to be hurt.

You do support the need for replacement workers. The question I have is, the last time Westroc Industries used replacement workers during a labour dispute, did you not find that it soured the working relationship between your hard-working employees and your company?

Mr Farrell: Are you referring to the strike in the early 1980s?

Mr Ward: You support the need for replacement workers, so I'm assuming you have used them. Is that true?

Mr Farrell: We used them once in the early 1980s.

Mr Ward: Did you not find the relationship between your hard-working, loyal employees and the company to be soured because of that experience?

Mr Farrell: There's no question that it caused some complications, but the choice for us basically was that we were in the middle of a nine-month strike and we had two options: either to continue the business, to make sure we had a business at the end of the strike—

Mr Ward: Which location was this?

Mr Farrell: This was located in Mississauga.

Mr Ward: The other question I have is that we've had mounting evidence concerning abuse by employers when it comes to petitions; mounting evidence from proponents of Bill 40 who come out in support of the petition restrictions, which are in existence in every other jurisdiction in Canada in some form or another. Yet you feel there is a

need to be critical of the direction we're heading in—what we suggest is the proper direction in Ontario—even though there is mounting evidence that there is employer abuse of that particular law as it exists today as it pertains to petitions. Do you dispute the evidence that has been presented to this committee by other presenters?

Mr Farrell: I wouldn't dispute it, but I do think it's important that employees have an opportunity to make sure they've made a proper and reasoned decision. I can only speak from my own experience with a previous employer, where membership cards were being signed. In some cases, when the employees were signing the membership cards, they were under the impression that they were asking for more information. So I think putting the provisions in this bill would limit the opportunities for employees to perhaps re-evaluate their position.

Mr Ward: Even though they're in existence everywhere else in Canada? You feel Ontario should stand alone on that particular issue?

Mr Farrell: I think employees should basically have a full opportunity to make an educated decision.

Mr Ron Eddy (Brant-Haldimand): Thank you for expressing your concerns to us. They're very helpful. I'm pleased you're here, especially in view of your experience with this company and the previous company.

On page 3, the second paragraph, I note with interest what you say: "Further changes are required in Bill 40, changes which need to be supported by business, labour and government." Indeed, realizing that bargaining and negotiation are the bases of good labour relations in Ontario and have been to a great extent, perhaps the present changes should be dealt with in the same way.

I doubt if we'd have as dramatic and as many changes, but perhaps there are many things, and indeed additional items, that could be included in amendments to Bill 40 that would be helpful to the three parties you named. Would you express an opinion on that?

Mr Farrell: I would agree with that. I think if all three sides were actively involved in helping to design the legislation and they could reach agreement and consensus on it, there would much more of a vested interest to have all sides supporting the legislation. Right now what we basically have is various groups opposing various segments of it. I think everybody is losing out because of it.

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Mr Gary Carr (Oakville South): I was interested regarding the strike. I believe that facility was the one down on Lakeshore in Mississauga, which I remember because it borders on my riding. It was a few years ago, if memory serves me.

If Bill 40 had been in place, there would be two sides to the argument. One could say the strike never would have happened because whatever the concerns were, they would have said, "Going out on strike, we wouldn't be able to operate. We'd totally have to shut down, so we're not going to go on strike, and give in to the demands." Another argument would be that had you gone on strike, there would have been even more serious consequences for the company.

Looking at this bill and looking at that strike, what do you think would have happened had this bill been in place going back to the time of the strike?

Mr Farrell: The strike probably would have lasted longer and probably our entire business would have been jeopardized. My concern with the use of replacement workers is that in the kind of industry we're in at Westroc, the decision to use replacement workers would be a last resort, because it takes a great deal of time to train our employees. There's always the concern that with a new, inexperienced workforce, you're going to produce inferior product.

The concern I have, though, with not having the option of using replacement workers is that it limits the leverage involved in the negotiation process. With the use of replacement workers, the union really has to think very carefully about its position, as we do, to make sure that the strike is basically the last resort.

For example, we had a strike last year in Montreal, a strike which lasted four months. To date, and it's been over a year since that strike, we still haven't really recovered our market share; we have lost a lot. In that strike in Montreal, the employees lost four months of wages. I'm not so sure that strike would have occurred if there had been the possibility of using replacement workers, because at the time of the bargaining last year, there was a feeling by the union that probably we would not go on strike because we couldn't use replacement workers.

It's the leverage aspect in the bargaining process that concerns me the most at Westroc about not being able to use replacement workers, because it limits our options and the unions are aware of that.

Mrs Witmer: Mr Farrell, thank you very much for your very positive presentation. I appreciate your willingness to sit down at the table and acknowledge that there are problems, and then together work them out.

You mentioned here that Bill 40 does abridge the rights of the individuals and the employers. You refer to the cooling-off provision that employees will no longer have after they sign a membership card. Do you have any suggestions as to how the rights of individuals can be re-established, improved upon, that are now being taken away?

Mr Farrell: I guess my feeling is that under the current provision we have in the act right now, I don't really believe the employees' rights are being jeopardized. Again, I can only refer to my own experience where I have been involved in non-union operations and where there were union drives, and there was no intimidation by management. Employees did have the free choice to sign the membership cards, but the experience I had was that often employees were signing the membership cards and weren't really fully aware of the consequences. By not allowing employees to re-evaluate their position, in some cases they may be signing the membership card and inadvertently believe that there will be another opportunity for them to make their final decision when in fact there wouldn't be.

The Chair: Thank you, Mr Farrell. We want to thank you and Westroc Industries for being here this morning presenting your views with respect to Bill 40; trusting that you'll keep in touch with members of this committee and other members of the Legislative Assembly.

Mr Farrell: Great. Thank you very much.

NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN

The Chair: The next participant is the National Action Committee on the Status of Women. Please seat yourselves at a microphone, tell us your names, your titles, if any, and try to save the last 15 minutes of the half-hour for exchanges and dialogue, please. Go ahead.

Ms Janet Maher: My name is Janet Maher. I'm with the Ontario Women's Action Coalition, which is the Ontario affiliate of the national action committee.

Ms Judy Fudge: My name's Judy Fudge. I teach labour relations law at Osgoode Hall law school and I'm co-chair of the employment and economy committee for the National Action Committee on the Status of Women.

We're pleased to be able to appear before the legislative committee considering Bill 40, the amendments to the Labour Relations Act, in order to present the view of our 500 member groups, of which 250 are located in Ontario. As Canada's largest feminist organization, NAC believes that it has an important voice which has not been heard or listened to, yet we see ourselves as representing the women who aren't in unions, who aren't part of the table. Unionization and labour relations law reform is absolutely essential for women workers and is a women's issue.

Ms Maher: I want to start by giving a bit of an overview to the presentation today, and I hope you have copies of our brief in hand.

Collective bargaining legislation is crucial for improving the economic situation and working conditions of women workers. Unionization and collective bargaining are important means for improving the terms and conditions of employment for women workers. Unions improve wages and working conditions for their members.

As well, in general, unions tend to compress the wage structure by making it more equal and they bargain for fringe benefits, many of which involve the same cost per worker to the employer and hence benefit lower-wage workers disproportionately. Unions also provide a degree of due process through mechanisms such as grievance procedures, as well as monitoring and communication functions; these are likely to help workers who have little individual bargaining power.

In addition, trade union representation is essential for the effective enforcement of statutory rights under the human rights, employment standards, pay equity, employment equity and occupational health and safety legislation. The problem is, though, that women benefit less from unionization than men do because women are less likely to be unionized. In Ontario, only 26% of women workers, compared to 36% of men, are members of trade unions.

The low unionization rate of women workers in Ontario we think is directly related to the existing labour relations law. Unfair labour practices, unions' lack of access to

women workers who work on third-party property such as shopping malls or industrial plazas; delays and roadblocks in the certification procedure—and I can speak from personal experience on this; the labour relations board's narrow definitions of appropriate bargaining units, which exacerbates the sex-segregated labour market; the isolation of part-time workers into their own units; delays in first-contract arbitration and employers' unfettered right to hire replacement workers work against the successful unionization of women workers.

These biases against the unionization of women workers are systemic and endemic to Ontario's collective bargaining law. The struggles of workers, many of whom are women, at Dylex, Fleck, Eaton's, Miniskools, McGregor Hosiers, just to name a few of the most notorious examples, illustrate the failures of existing labour relations legislation to provide effective collective bargaining for the majority of women workers in Ontario.

I want also to talk a bit about the role of the mainstream media in the current debate over labour law reform. In the mainstream media in general, and the daily newspapers in particular, the debate over labour law reform has been framed as big unions attempting to persuade their friends in government to tip the existing balance in labour law against employers. Not only are the biases in labour law which benefit employers ignored in that caricature, the concerted pressure of the business lobby, represented before you by groups like the All Business Coalition, More Jobs Coalition and Project Economic Growth, has not received any critical evaluation.

Instead of directly answering why it is that modest reform of labour relations legislation, which is designed to result in a slight-to-moderate increase in unionization, is so bad for the Ontario economy, business interests have resorted to both tacit and explicit threats that companies will be forced to relocate or to divest if legislation is enacted which helps workers to unionize. Indeed the very people whom the legislative amendments are designed to protect, unorganized women workers of all colours and visible minority workers of both genders, have been noticeably absent from the public debate as reported in popular media.

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We think it is time for this government to listen to these workers and the organizations which represent them. Business interests have dominated the debate for too long. The fact that the Ministry of Labour's own highlights of Bill 40 announces that 10 of the changes in Bill 40 which depart from the Ministry of Labour's November 1991 discussion paper are directly attributable to business pressure demonstrates the extent to which the business lobby has drowned out the legitimate demands of Ontario workers.

The government's decision to water down labour reforms in response to this pressure we think is profoundly distressing, both to NAC and to the women we represent and to the women in the Ontario Women's Action Coalition. Any further capitulation to these bullying tactics will undermine the government's commitment to improving equity in the workplace for women and for visible minority workers.

In our submission in response to the Ministry of Labour's discussion paper, we strongly supported the government's commitment to revising the Labour Relations Act to facilitate the right to organize for women of all colours and visible minority workers of both genders who are employed in small establishments in the services sector.

However, even then we were concerned that the government's proposal simply did not go far enough to ensure effective access to organizing and collective bargaining for working people, particularly working women, in Ontario. Our reasons for that evaluation were presented when we spoke at that time. We think the evaluation still stands, doubly so in light of the government's decision to further compromise the ability of women workers to join trade unions, to enter and engage in effective collective bargaining. We believe that stronger legislation than is provided for in Bill 40 is needed to protect what have become paper rights for the majority of women workers in this province. Rather than going over the old ground covered in our previous submission, though, I'll ask Judy to talk about our five main concerns. Then we'll go directly to the recommendations in order to give some time for your questions.

Ms Fudge: We've identified five major areas that directly impact on the unionization of women workers. The first is organizing rights; second, bargaining unit structures; third, first-contract arbitration; fourth, replacement worker restrictions; and fifth, the preservation of bargaining rights on successors, on the sale of a business.

Organizing rights are absolutely key for the unionization of women workers. For too long, too many unscrupulous employers have fired, disciplined and intimidated workers from joining trade unions. We know this is the case. All you have to do is to read the Ontario Labour Relations Board reports. When I teach labour relations law to my students at the law school, they are surprised that any workers can unionize. What we see is in fact that the workers who have been able to unionize in this province are old-scale manufacturing, resource and transportation sectors and the public service. If you look at the proportion of unorganized women in the private sector, it's the vast majority. Only about 12%, at the very most, of women in the private sector are unionized, and it's not because they don't want to join unions; it's because they are faced by a bunch of hurdles.

Petitions have to be abolished after certification application has been launched with the Ontario Labour Relations Board. In the vast majority of cases, the petitions are organized by employers and they're thrown out, and they don't influence the actual certification of the bargaining unit. However, they create huge delays which cost thousands of dollars, which go into lawyers' hands, not workers' hands, and not into the productive capacity of the province. This should be stopped now.

Access to third-party property is absolutely essential for organizing women workers. We know that from the Eaton's strike in the mid-1980s here in Ontario. We could have avoided thousands of dollars of litigation if it had been clear right from the beginning that the union was legally entitled to go into public areas to hand out information. This

should be provided and we're very pleased that the government has introduced that.

We're saddened to see that the government has compromised from some of the proposals that it had introduced in the 1991 discussion paper. We cannot understand why employers could possibly object to the requirement to post a notice of legal rights in their workplaces. All the government had proposed was that employers have to post that employees are entitled to join unions. But somehow the business community thought this was too much of an infringement on their freedom to use their wall space as they saw fit. This is a legal right. The way to give access to legal rights is through education. There should be no reason that anyone would be upset by this, and the business community's adamant opposition to this just seems to me to suggest an anti-union perspective rather than any commitment to partnership.

Bargaining unit structures are absolutely key for the unionization of women workers. The vast majority of bargaining units certified here in Ontario are fewer than 20 members. Twenty people cannot fight against the National Trust Co. That's why it's been unsuccessful to maintain the collective agreements and the unions they've had; you can't do that. We've seen it in the banks federally. We'll see in the trust companies. We've seen it with Eaton's. We've seen it with various other service sectors.

We need larger units. We need a full-scale revision of bargaining unit structure here in Ontario, because the analysis we've done of bargaining unit structure shows that bargaining unit determination is based on sex-biased criteria, which results in the fact that women are segregated into small units, female-dominated, with little power. The government should move immediately to establish a task force on broader-based bargaining to look into this matter.

We are, however, happy with three of the reforms the government has come forward with in the bargaining unit determination process. For too long the Ontario Labour Relations Board has segregated part-time workers into separate units from full-time workers on the strange assumption, which is completely ill-founded, that these two groups of workers have separate interests. They have separate interests typically because part-time workers are paid less and get few fringe benefits and are women. Their interests are the same as other workers: to get better wages, to get better benefits and to work in solidarity to improve their conditions of work. We think this is an important step that the government has done to say that part-time units and full-time units should be the same unit.

We're also pleased to see that the government will allow for the consolidation of different bargaining units of the same employer, represented by the same unit at different locations. This is an important step forward, because it allows workers to consolidate and it will stop employers from contracting out services to other locations during strikes to prolong strikes. This is an absolutely essential amendment.

However, we are sad that the government has seen fit only to make this a consideration in the labour relations board's bargaining unit determination policy. Consolida-

tion should be mandatory. Workers should decide with whom they have a community of interest, not the labour relations board.

Third, we are pleased to see that domestic workers are now permitted to join a union. This is an important step forward, and we are very pleased. There have been several charter challenges around these kinds of things in the past, so it's good to see that we finally recognize that women who work providing essential services around child care are now entitled to join unions.

The problem is that this is simply a symbolic right. We have not amended the bargaining unit's requirement that there be two members to a bargaining unit. Most people don't hire an army of domestic workers. So we think this is an important step forward but only a symbolic step forward, and we think we need a task force on broader-based bargaining to look at unionization for domestic workers.

First-contract arbitration we think is a really important amendment. The automatic right to first-contract arbitration within 30 days from a right-to-strike or right-to-lock-out position is important. We've seen that first-contract arbitration, as it now is in the legislation, results in incredibly long delays to get the right to first contract. The hearings take several months just to find out if you're going to get a first contract and then it can take from nine months to three years to get a first contract imposed.

These should be real rights, and employers who have engaged in practices and who have shown an anti-union history in the past should be forced to live up to the legal obligations and bargain with these people. If they can't bargain with these people, they should have the contract imposed.

Replacement worker restrictions are absolutely essential for workers in the retail sector and in the service sector. We've seen long strikes involving women workers because employers have hired replacement workers. We only have to think of Fleck in the late 1970s and Eaton's in the mid-1980s, where employers have hired many replacement workers during a lawful strike and then those employees continue to be hired, as at Eaton's, are rolled into the bargaining unit, and lo and behold we have a decertification application. What a surprise. We've got to stop that.

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Employers, under this proposed legislation, can use supervisory employees, managerial employees, and they can contract out work. I cannot see how they could possibly not be able to live with this. It may be cases like Westroc, where they locked out and then hired replacement workers, rather than having a strike and then hiring replacement workers. We see that some employers actually use replacement workers with lockouts to defeat unionization. We have to stop this. It is a basic democratic right to be able to join a union, to be able to engage in collective bargaining. The law has placed an advantage in the hands of employers, which should be righted now.

Preservation of bargaining units is absolutely key for workers in the service sector. We're pleased to see that this government has finally introduced legislation which will implement the demands of the coalition that was formed in the 1970s for cleaners' rights.

In the service contracting and recontracting business, cafeteria workers and cleaners have fought long and hard to get unionized and sign a collective agreement. Then the Canadian Imperial Bank of Commerce or any other large organization tenders the contract and those workers lose their collective agreement. What we've got in this legislation is something that says that if you tender and the tenderer hires those employees, then the collective agreement follows. This is an important step.

We'd like to see improvements as well in successor right provisions, because we know right now that some employers sell their business by selling only their assets and arranging their legal relationships so that they avoid successor right provisions. We think that should be strengthened now.

We'd also like to see some changes to the related employer provision. The National Action Committee on the Status of Women is a member of the home workers' coalition for fair wages and just working conditions. What we've seen in the city of Toronto is a movement away from factory work into home workers, particularly in the Chinese garment workers' community.

We know that at the top of the pyramid sits Dylex, the largest Canadian clothes retailer in the country. We know they have a chain of jobbers and manufacturers and contractors, and ultimately the work is being done by home workers who are working extraordinarily long hours, getting less than minimum wage and no benefits. A related employer provision, by showing who's the economic dominator at the top and tracing through the chain of contracts, would impose legal obligations on employers like Dylex that are trying to treat Canadian women workers now like workers in Bangladesh and Honduras are being treated. This must be stopped.

In all, in our brief we provide an analysis of what we consider to be both the shortcomings and the benefits of the proposed legislation. NAC believes the legislation is a step in the right direction and we would encourage the government to walk more boldly down this path.

NAC endorses the government's social equity objective of improving access to organization and collective bargaining for workers at the bottom of the labour market. The current process of economic restructuring and continental integration has resulted in an increasingly polarized labour market.

The Economic Council of Canada, before it was disbanded by the Tories, characterized this trend as good jobs-bad jobs. Most of these bad jobs are done by women and young workers. The proliferation of non-standard work, or bad jobs, is making things worse for the majority of workers in Ontario.

NAC believes that it is crucial for the government to develop a labour market strategy which is designed for workers at the bottom. While some of the government's proposals will facilitate organizing and collective bargaining, we believe they simply do not go far enough. In effect, the government is introducing amendments designed for a 1970s labour market, which is radically different from the polarized labour market of the late 1980s and the 1990s.

It is extremely unlikely that even if all the proposals are implemented, women and visible minority workers will benefit to any really significant extent. Trickle-down strategies will not prevent the growth of precarious employment or stop the spread of cheap labour. The implementation of a social equity agenda should begin by addressing the precarious situation of workers at the bottom.

Business is opposed to any reforms which will improve the equitable regulation of the labour market. In the past, business has opposed legislation imposing minimum wages, maximum hours of work, maternity leaves, pay and employment equity and the right of workers to join unions and engage in collective bargaining. Each of these legislative victories has been won after a prolonged struggle with business opponents, often from recalcitrant governments.

Despite legislative initiatives such as collective bargaining and employment standards law—and many of us would argue that it is precisely because of these forms of regulation—the people of Ontario have enjoyed an enviable standard of living when compared with the situation of people around the globe.

Business is using the shibboleth of global competition in an attempt to lower the living standards of Ontario working people and working women. Business has always called for laissez-faire in the labour market because without regulation it will always attempt to lower the cost of labour. That's the way the system works. This government should not allow this to continue to happen. Thus, it must remain firm in its commitment to a social equity agenda for Ontario. Enacting labour law reform is just one step in this agenda; pay and employment equity legislation which has been introduced should also be enacted.

NAC urges the government immediately to act upon the following recommendations:

1. Establish a task force on broader-based bargaining to examine and develop various models for achieving broader-based bargaining in specific sectors across Ontario. Broader-based bargaining is absolutely essential if the most vulnerable workers are to enjoy the benefits of effective collective bargaining.

2. The government should immediately undertake a review of the Employment Standards Act. This legislation no longer addresses the needs of unorganized workers. In the interim, the government should ensure the effective enforcement of existing minimum standards. Not only are the existing standards low; the present legislation is riddled with exemptions. To make matters worse, the abysmal enforcement record of the Ministry of Labour is well documented.

The effective enforcement of existing labour standards would be of immediate benefit for workers at the bottom of the labour market and it would also create a disincentive for employers to continue to fight unionization because they can exploit poorly protected workers at the bottom. It is simply unacceptable that many employers continue to flout basic legal rights.

3. The government should adhere to its timetable regarding the introduction of legislation to revise the Labour Relations Act. Bill 40 should be introduced and it should be introduced soon. However, in doing so, the government

must stand firm in the face of the orchestrated business opposition to these reforms. In fact, if the government is truly committed to its social equity objectives, it should substantially strengthen many of the proposals contained in Bill 40.

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Mr Offer: Thank you for your presentation. I was listening to your presentation carefully, and it seems what you are saying in the area of home workers is that because there isn't this broader-based sectoral type of bargaining, this bill doesn't really help in any marked way. The second point is with respect to domestics, notwithstanding the fact they're now included, that because the minimum unit has not been reduced from what it is now, from two to one, the bill will not in any real way help domestics.

I'm wondering if that's the position on those two areas, because I have a question I would like to ask. If the bill doesn't do it, do you think that maybe we should be looking at the Employment Standards Act?

Ms Fudge: I think it's always a mistake to attempt to revise labour relations legislation to improve the conditions of workers in a particular sector by only looking at individual pieces of legislation. So I would say that you're right. If you want to improve the conditions of the growing numbers of home workers in Ontario and the conditions of domestic workers, you would have to revise the Employment Standards Act and you would also have to introduce broader-based bargaining.

But as well, you would have to ensure that employers don't misuse petitions, that there are expedited hearings for unfair labour practices instead of the incredible delays that there are now, that there are no replacement workers, that there is access to first-contract arbitration. I guess because, having presented briefs before, I've become a bit of a political realist. I'd be happy to see the expedited hearings for unfair labour practices and no petitions as a down payment and first step in that way. It would be wonderful to see all the parties coming out in support of unorganized women workers in that way.

Mr Offer: Do I have time for one last question?

The Chair: One last brief question.

Mr Offer: I'd certainly love to discuss with you the issue of replacement workers on the basis of things we have heard, but I want to talk about the full-time and part-time issue, because in the legislation there is an assumption. The assumption is, first, that the part-time workers have been unionized. There's an assumption that the full-time workers have been unionized. After making that assumption, there is the possibility of combining those two units. But because of the way in which it's worded, I believe the rights and the wishes of the part-time workers can easily be overlooked.

I've used the example of if there is a unit of 75 full-time workers and a unit of 25 part-time workers, under this legislation, if 55 full-time workers say, "Yes, we want to be combined," and no part-time worker in that unit wished to be combined, then under the legislation they are combined. Is there a concern you have when there's legislation

that really does and can absent itself from the wishes of part-time workers in one unit?

Ms Fudge: The way the present legislation operates under board policy is that if either the employer or the union doesn't want the part-timers in, the part-timers aren't brought in, regardless of the wish of 100% of the part-time workers. So I certainly think going back to maintaining the status quo would be the worst possible thing.

Most of the evidence suggests that part-time work is increasingly an involuntary experience. The studies that were done by Weekes, Davis, White and the large study done by the federal government suggest that part-timers would prefer to be in full-time units. So if there were the occasional anomaly, discrepancies such as you suggested—I guess it's also like the 40% of workers who may not want to join a trade union. That's the problem; it's democracy. I don't know how many Liberals didn't vote for the NDP. It's something you have to live with, and in that case, I think the workers should live with it.

Mrs Witmer: Ms Fudge, thank you for your presentation. Certainly, I would agree with you that this legislation does not meet the needs of women, especially minority immigrant women and visible minorities.

You've indicated here that joining a union should be recognized as a right and should not require workers to participate in clandestine activities. I would agree with you.

One of the things I have been concerned about is that we should no longer continue to exploit women and immigrants who do not always have very good language skills and don't understand English. I would agree that workers need the right to organize. In order to carry through on that, I think they also need to be fully informed as to what it means to be unionized, what are the consequences, what are the dues, what it means to go on strike.

I have been encouraging the government to look at a process where all workers, during the certification process, would be fully informed by both the union organizer and the employer as to what's involved. I think it should be a very open process. Then at the end of the process, I have been suggesting there be a secret ballot vote so that all workers have the opportunity to exercise that democratic right of a free vote after being fully informed.

I would hope in the case of immigrant women we would make interpreters available to them as well so they would fully understand what is involved, what is going on, because these people, as you have indicated, certainly can be exploited by many different sources.

Ms Fudge: That's the model they have in the United States under the Wagner Act, where they have representation votes on each case. Employers abuse them even though there's all sorts of access and things like that. It's notorious that employers abuse them.

Even Paul Weiler, who is a professor at Harvard University and not known as an extreme supporter of feminist causes, has argued that the very mechanism you're proposing creates such a power advantage for employers, who have the ability to hire, fire and discipline during this process and the ability to intimidate workers, that it results

in a lack of success in union representation votes when these people had initially supported unions.

I would be extremely worried about moving in that direction. Maybe I could foresee that direction being okay if, as a quid pro quo, employers were not allowed to discharge or discipline or change terms and conditions of employment once the union put up a petition to certify. That might be an interesting tradeoff, but I don't think you'd get many employers' organizations buying that one.

Mrs Witmer: Obviously, the government could establish safeguards. I guess if we talk about the need to make sure that workers are not exploited, I don't know why you would object to fully informing all people in a workplace as to what unionization involves, because this is a decision that's going to have an impact on their jobs for many years to come.

Ms Maher: I fully agree with you that it is a decision. I've been involved in three different organizing drives. As a member of a workplace over the last 12 years, I've been involved in organizing. I don't even recognize some of the conditions you're talking about. Normally, the will to unionize, particularly in small workplaces where you have a lot of women and visible minorities—the workers recognize there's a situation of unfairness going on. Particularly in a small workplace, you can't afford to have dissension within the work unit.

I can't imagine a situation where everybody isn't quite fully apprised of the needs, the rights, the objectives of a unionizing drive and so on and so forth. Other than some of the notice provisions and so on that we've talked about, I'm trying to figure out how there's going to be the kind of situation you talk about.

Mrs Witmer: You can have a situation where you would only need 55% of the membership to sign cards, so the rest of them might not even be aware of the fact that there's a drive going on and would be forced into a union. What I'm saying is that we need to inform the entire workplace that there's a unionizing drive. We need to fully discuss what's involved in joining a union and then allow individuals to make a free choice. Obviously we can put in some safeguards and make sure people are not dismissed, but I think we need to open up the process. You yourself have indicated it should not be a clandestine activity.

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Ms Maher: And it hardly ever is.

Mrs Witmer: That's right.

Ms Fudge: But one of the first questions I ask my students when we're doing unfair labour practice during organizing is, why are all these workers meeting in the Holiday Inn? It's because they can't speak union in the workplace and not get disciplined. That is an unfair labour practice now, to dismiss or to discipline workers during organizing drives, but it happens all the time. Employers are flouting the law repeatedly. Workers have tried to organize.

I think it's a mischaracterization to see unions, which have historically arisen out of the needs and feelings and longings of people for self-determination, as the evil bad guys when they're defensive organizations historically organized by people who want protection from the power

employers have exercised against them. We have to accept in Ontario that many employers continue to break the law repeatedly, and it's cost-effective for them to do so.

So I think I would disagree with your assumption right from the beginning. I think it's not based on an accurate assessment of the facts or an accurate assessment of the historical situation that's led to the demand for unionization by women and men workers in this province.

Mrs Witmer: So you would disagree that workers have the right to be fully informed and to cast a secret ballot and make that choice as an individual.

Ms Fudge: I would say that the democratic protections available to workers now are closely drawn, and they protect this, and that the intimidation people experience in their work is not from their unions but from their employers. That's precisely why, as the largest representative of women's groups, we would like to see stronger legislation introduced now to stop employers from behaving unscrupulously and making workers behave in a clandestine manner so that they avoid being discharged and disciplined.

Mr Bob Huget (Sarnia): Thank you very much for your presentation. You raise the issue of the garment industry. I should tell you that Dylex has been here and presented quite a different picture of the garment industry than we were afforded last night by people who work in the home working industry. In fact Dylex will tell you that it has a very progressive, modern operation and none of these injustices occur. Home workers reminded us last evening of situations where there are people working in basements, and in this particular case with a hearing disability, for approximately \$1 an hour as a home worker and a piece worker and then provide those finished goods, I suppose, to family-type operations like Dylex.

In your brief, on pages 13 and 14 you refer to the Labour Relations Act and the definition of a "related employer" and say that it should be patterned after the Employment Standards Act. You also relate to a structure I think it is important that people understand, this pyramid structure, how that structure would allow a company like Dylex to tell me on the one hand, I suppose, that it's the best place on this earth to work, and still have those kinds of conditions in suppliers to its operation. I would like to know how that system works and what inherently is its impact on women workers and on immigrant women workers, and if there is time, I would like to know your views on the expansion of home work, not garment work essentially, but other types of home work, through technology, for example by the use of computer modems and the ability to do a lot of computer work at home. Is this an issue of the future that's going to become bigger and not smaller?

Ms Maher: I want to start with your last question first, because I think this is something that's increasingly coming to our information. We have all the fast-food chains and so on doing data processing away from the fast-food operations, the delivery operations and so on. I think that is an increasing trend, and it's part of the bad-job stuff Judy talked about before. How we can address any of

those kinds of issues without the broader-based bargaining strategy I think is a really major kind of piece, and you were going to talk to the other piece.

Ms Fudge: No one knows how many home workers there are, and home workers cover a spectrum from someone like me, who takes my Toshiba home and works on that as a professional, to the woman in the sweatshop conditions as a garment worker. But it's increasingly covering white-collar workers, we've seen. So there's a continuum, and we know that employers are engaging home workers because it shifts the costs of production away from themselves on to the workers. We also know they're impossible to unionize and it's impossible to enforce minimum standards.

Globally, there is an increase in home working of all the various different types. In Ontario we've seen an increase in the garment industry. In the United States they estimate that there's been a 300% increase in home working since the mid-1970s.

Home working would be a form of employment that the economic council called own account self-employment, and the average income of these people is under \$10,000 in 1989 dollars, so they're the worst-off people, but at law, employers try to characterize them as small-time entrepreneurs.

In the garment industry I think what we're seeing is the beginning of a way that lots of corporations are going to try and restructure. The garment industry is on the one hand extraordinarily labour-intensive, but it is in fact investing in many new technologies. The new textile productions are capital-intensive and extremely efficient, and there's now electronic data interchange, which allows retailers at the top—Dylex, the Bay and Eaton's; just three notorious examples here—to set up this electronic data interchange with manufacturers and jobbers. They tell the manufacturers and jobbers, "We need white women's blouses at this retail price; you provide them to us," and they interlock electronically. They then have the manufacturers and the jobbers, who contract out that work down to subcontractors, and then at the bottom to a chain of home workers.

The manufacturers and jobbers no longer now sell large inventories to the retailers. What they do is sell piece, and they play in competition with each other.

So they're completely controlled economically, and as we move each step down the pyramid we have increasing competition, and at the very bottom of the pyramid we have home workers, visible minority workers, who have no union protection and very few legal protections.

This form of production in the garment industry was introduced in Mexico in the 1960s and is used by large multinational producers like Liz Claiborne, where they have some production in Bangladesh, some production in the Philippines and some production in Honduras, and they use this.

If you're going to ensure that employers are using new forms of flexible production to increase the value added part of their business efficiently, then what we have to do is create a disincentive where they're just using these new production forms to exploit labour, because I think we'd all agree that cheap labour—poor jobs—will not generate

enough wealth for Ontario to continue into prosperity. To ensure that they use these new production forms efficiently, we have to ensure that there are very good minimum standards protections at the bottom so it's just not a way of avoiding regulation.

It seems to me that's a good test. If you want to do it efficiently, productively and in partnership, we're really happy to see that. We need wealth generation here. But please don't use "flexible" as a euphemism for exploitation, because it is getting a bit tiresome.

The Chair: Mr Klopp, quickly, please.

Mr Paul Klopp (Huron): Yes. You mention on page 6 access to employer property and you expanded on that during your conversation. The other area was employee lists. That has been brought up before. There has been discussion from a different point of view that you don't want to have women's names on a list, and their addresses, because it will be out there and women will be—I don't know what could happen—abused or something. What is your opinion on that? Can you expand on that point, or do you have a different view?

Ms Fudge: I think there is a general problem around access to names. In the society we live in, women have a legitimate fear of being intimidated. I do not see why employers are now attempting to defend women from nasty, harassing unions when they fought sexual harassment policies and sexual harassment legislation. I just don't quite understand this about-face, this feminist revival in employers' groups.

I think one thing about giving unions access to lists is that it acknowledges the legitimacy of the right to join a union. I can't quite understand why we make unions engage in this huge, awful process of going through phone books and phoning up all the J. Smiths in a particular area, hoping to get that particular employee, to call them out to a union organizing drive.

It seems to me the ability to join a trade union should be the same as the ability to join almost any other thing. I'm quite sure some employers send employee lists off to various forms of organizations all the time. If we're going to prohibit employers from giving unions access to lists, maybe we should treat this as a confidential piece of information, and employers shouldn't use it for a whole range of other things like they do.

The Chair: Thank you. We've got to end this, because we've gone a little bit beyond our time slot. We'll have to go into our lunch break. In any event, I want to thank the National Action Committee on the Status of Women. Professor Fudge and Ms Maher, we thank you for coming here and sharing your views with us and for entertaining and responding to our questions. We appreciate your interest and your involvement. Thank you kindly.

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JOHN CRISPO

The Chair: Professor Crispo is the next participant. Please be seated. You'll have half an hour, sir.

Dr John Crispo: Thank you for the opportunity to appear. I'll be on very short notice, and that leads to one

point I'd like to make at the outset about my formal brief. It's hardly a formal brief. I just wasn't in a position to write a formal brief overnight, especially with the North American free trade agreement being announced. What I've given you is something I intended to submit as a newspaper article, especially if I didn't get an opportunity to appear before this committee. I'll speak to it if you want. It captures the essence of what I want to say, but I had some other notes, which I'll refer to in a moment, that I think would be more appropriate for my actual presentation.

Perhaps if you'll forgive me, I could start with my credentials. It may be a little arrogant and egotistical to do so, but I've spent 30 years of my life teaching industrial relations. I spent much of my early life doing a lot of arbitration, conciliation and mediation. I was on several royal commissions and task forces. I was a consultant at various times to the Ontario Ministry of Labour and the Ontario Labour Relations Board. I was chairman of the first Ontario labour-management council. Unfortunately it didn't survive. I was a member of the Prime Minister's task force on industrial relations, which was a two-year effort that led to what I think is the most comprehensive report ever written on industrial relations in this country and which is still my Bible to this day.

Perhaps most of all, I had Bob Rae as my research and teaching assistant for two years, so I learned a lot at the seat of the Premier. I hesitate to take on Bob on anything, though. Forgive this little note of humour; I hope you'll find it humorous. Bob and I debated for years. I'll never forget one of our first debates. We were on the Pierre Berton show and Pierre started by saying, "I think I should tell this audience that Bob Rae was John's research and teaching assistant for two years." I said: "Hold it, Pierre. Let's make it clear to you and the audience that Bob may have been my research and teaching assistant for two years, but he didn't learn a thing." Bob just looked across—Pierre was here and Bob was there—and said, "There was nothing to learn." Since then, I've been a little careful in anything I say about Bob.

Let's get down to cases. I think this would be intriguing for you. I was due to debate the changes in the Labour Relations Act before the provincial youth council of the NDP last January or February, and due to a misunderstanding I arrived late, the meeting was over and we never had the debate. So I would like to use the notes I prepared at that time, because I always say the same thing before every group I address. I'll skip the introduction, which you might have enjoyed, because I was congratulating the NDP for allowing a character like myself to appear before one of its gatherings to debate a controversial public issue. But after that, my first substantive point was going to be to tell the provincial youth of the NDP why I thought their government was in so much trouble on this legislation, and I'll be very brief.

The points I was going to make were, first of all, you're NDP and you're perceived to be pro-labour. You are pro-labour. Second, the minister is a former Steelworker representative, and I might say a very honest man. He wears his heart and his soul and his mind and everything else on his sleeve and he couldn't help but say what

he thought and say it very publicly. During this process, there were the leaked memorandums that gave rise to all sorts of criticism, and perhaps more important than all that is the fact that the economy's in such a mess.

It's in a crisis. Anybody who isn't frightened by what's happening to this country isn't aware of what's going on, and it isn't just because of a recession; it's because of the restructuring we have to go through. Many of you will probably blame it on the free trade agreement. It has precious little to do with the FTA; it has to do with the globalization of everything that's going on.

Meanwhile, we're stuck with unbelievably high deficits and debts, which in turn are giving rise to unbelievably high interest rates and dollar. Some people think interest rates are down in Canada. They're not. In real terms our interest rates still are much higher than the United States because our rate of inflation is much lower.

So we're in real difficulty, and that scares people, and change during tough times scares people.

Finally—perhaps not finally, but let's say finally—it isn't just the changes to the Labour Relations Act that have got employers, and I think more than employers, upset. It's the other changes you're proposing: substantial raises in the minimum wage, further strictures under the heading of equal pay for work of equal value, further strictures under the heading of employment equity, and perhaps workers' compensation for stress. If that comes in, Peter, you and I are going to go and jointly apply. Oh, Peter's gone. Sorry. He never stays when I'm around, so I should be used to that. But we'll go and apply for stress and get workers' compensation for it.

None the less, I have some sympathy with the government, because I think some of the reaction has been a little hysterical, but I find it ironic. I couldn't believe the figure of 500,000 jobs that were going to be lost just because of this law. That might happen if you do all the things you're proposing to do, the list I just gave you. The reason I find it ironic is that's the same figure the NDP and the labour movement threw up as the jobs that would be lost because of free trade. There's about as much substance to the one as there is to the other.

Having said that, let's look at the proposed changes. I won't deal with them all.

The preamble: Perhaps a lot of people don't talk about the preamble. I agree in principle in putting in a much better preamble. But when we were on the task force we said, "Look, all the preamble of the Labour Relations Act should say is that there are three purposes to the act: to encourage and facilitate trade unions among groups of workers that want them; to establish the rules of the game, if you want to call it that, the dos and the don'ts for labour, management and everybody else involved; and to protect the public interest," in several senses, which I need not go into.

If you're going to go beyond that and talk about improved terms and conditions of employment, that's fine, but why don't you couple that with something more fulsome than you've got about efficiency, innovation, productivity and competitiveness? Put the two things in there, because there's no way you're going to have improved

terms and conditions of employment unless we're more efficient, innovative, productive and more competitive. So put that whole thing in there if you're going to put anything in. I wouldn't put either of the latter two things in, frankly.

Turning to coverage, I agree in principle. Everybody who wants to engage in collective bargaining or collective bludgeoning—that's what the professionals engage in—should be under the same legislation. I agree with covering agricultural workers, domestics and professionals.

But why do you still have separate provisions for civil servants and teachers, other than the fact that the NDP owes them a special debt of gratitude? Why are police and firemen and hospital workers under different laws?

No province in this country has a more fragmented approach to the administration of labour relations legislation than this one. If you were going to put everybody under, then put everybody under and don't leave anybody with any special acts of their own.

Certification: I'm pretty strong on certification in the written document you've got. I feel very strongly about mandatory votes. I just think it's an absolute must. And I heard what Judy was saying before. My article says this: I know the legal and not-so-legal things employers engage in. I also know the legal and not-so-legal coercive pressures that unions engage in in trying to persuade individuals to sign cards.

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The only fair and honest way to determine what the collective wishes of a group of workers are is to conduct a board-supervised secret ballot. Now, that should be on a pre-hearing basis every time so you minimize the possibility of employers engaging in the kind of tactics they do.

Why do I feel so strongly about a vote? Not just because I believe that's the only way to discover the true wishes of a collective group of people, but because certification represents a major change in the workplace. I'm not talking about whether it's good or bad, but it does lead to exclusive bargaining rights, to monopoly bargaining rights, which I happen to agree with, to taking away the individual's right to bargain.

It also leads under our law, and I agree with it as well, to the agency shop, to the compulsory levy of union dues and the even higher forms of union security where unions can negotiate them. This is a major change in the constitution of the workplace. By and large, I argue that most workers should probably think very seriously about it, because I don't think they're treated that fairly when they're on their own. But it does amount to a major change, and it should never occur, in my judgement, without a vote.

You'll find some pretty strong language in that article about an NDP that's supposed to believe in the collective judgement of the working men and the working women of this province being so unwilling to give them a vote, not only on this, but on ratification and strike votes, which I may never get back to, but it's just as important that those votes be conducted on a secret ballot basis with maximum access supervised by the labour board.

As for the anti-scab provisions, I just disagree in principle. It won't mean the end of the world; I'm not going to

exaggerate this thing. It's going to be very serious for small employers and for a few large ones. Even the poor little Toronto Star says it would die without the right to replace workers. But it's the principle involved. You're just wrong. The quid pro quo for the right to strike is not the right to lock out. A lockout is hardly every used.

As I said in that article, it is a strategic and tactical measure that employers use sometimes when they're faced with a strike and they want to get a jump on the union, so they lock the workers out. The quid pro quo for the right to strike is the right to try to operate, and if one is precious in a free society, the other is precious in a free society. So I say you're dead wrong on this; again, I say this in the article.

Not to say you shouldn't regulate the right to strike, which we do, and you shouldn't regulate the right to try to operate. I feel very strongly that employers should never, in the face of a strike, be allowed to pay employees or replacements anything more, directly or indirectly, than they've offered the union. If you put that in the law, you would eliminate professional strikebreaking activities, which in my judgement should be eliminated. I've said enough on that.

I want to leave a lot of time for questions. Here, forgive me. I didn't have time. I don't even know whether everything that I was going to talk about in terms of redefining obsolete bargaining units—I agree with that as long as it's along the lines of the BC and the federal legislation.

Good faith? Let me be brief: Drop it. Who can define good faith? All the law should say is that there's an obligation to meet and exchange positions. We already have compulsory conciliation. That's enough. How do you figure out what good faith is, for heaven's sake?

I think the proposed changes evidence too much faith in arbitration and adjudication, but I don't want to spend a lot of time on that. I could say something on first-agreement arbitration. I'm not that big a fan, but it's worked better in Quebec than I thought it would.

Adjustment assistance: I agree in principle. I'm a little worried about the detail. I would want to see some more clarification of secondary action. For example, I've always supported full primary allied picketing. In other words, if one plant's on strike and it subcontracts the work to another plant, that plant's allied and the union should be entitled to strike there.

I've always upheld the right of token—and I'll use the word so you can criticize me—secondary consumer picketing. I'll give you an example: Bata. Tom will kill me, but if Bata Industries got a legal strike in its plant, I don't see why one token picket shouldn't be allowed outside a Bata shoe store in Yorkdale. As long as it's one and they're making it clear they have a dispute with Bata. I don't know why that isn't allowed.

Missing—and this really bothers me. Why is there no bill of rights for union members? I know why. You're so beholden to the unions you can't put one in, and that's dead wrong. When the United States is ahead of us in anything, we should hold our heads in shame. They have a comprehensive bill of rights for union members that goes a little too far. Why don't we have one?

Now that we have agency shops, compulsory memberships and a devil of a lot of other things, there should be a bill of rights for union members upholding the right to oppose and depose leaders if they want to, upholding the right to go in and just fight their leaders when they don't like the terms of the collective agreement.

I heard all this talk from the previous witness about the coercive pressures of employers. I've been around this business long enough to know there are some pretty coercive pressures on the other side. I don't trust either one of them. "If it's organized, it's suspect" is my motto, which makes all of you suspect, I guess.

The Chair: I'm not all that well organized.

Dr Crispo: I would make an exception of you.

The Chair: Bless you. Thank you.

Dr Crispo: I think Bob might too.

The Chair: He has.

Dr Crispo: Yes, I know. I kind of like you for that reason alone and I don't know you that well. But he's making an exception of me too.

By the way, there are appeal boards in the CAW and the UAW. You could just put in the law that if the labour movement itself does not put in a public review board, à la what the UAW started in the United States and the CAW continued in Canada, then the appeal will be to the labour relations board if you think your rights as a union member have been infringed. Why couldn't you as social democrats put that elementary right in there? It's just staggering.

I've already mentioned in passing—I'll just say it again—why isn't there a secret ballot with maximum access on ratification and strike votes?

Anyway, just to conclude, I'm—

Mr Ferguson: It raises my comfort level.

Dr Crispo: When I'm concluding?

I think you're going too far too fast. I said some pretty strong things at the end of that article and I guess I believe them. I don't think politics is a very principled business—I might as well say what I said in the article—and I don't like what governments do for those they're so beholden to. You're just demonstrating you're no different than the old-line parties. You'll do anything to toe the line for those who put you in power. It's wrong. You're not doing this because it's right. I don't believe you're doing it because it's right. I quite frankly don't believe Bob Rae believes all this is right. You're doing it because you owe a big debt of gratitude. That is no way to legislate if you're truly operating in the public interest.

Mrs Witmer: Thank you very much, Professor Crispo.

Dr Crispo: You can call me John; I don't like titles.

Mrs Witmer: John, great. I did enjoy your presentation. I was interested. You talked about a bill of rights in the United States. Could you give us a little bit more information about the bill of rights?

Dr Crispo: Yes, the background is that Kennedy wanted to be president and he had to prove that he was evenhanded. He had to dump on labour, so they had the McClellan hearings and the Kennedys really went a long

way beating up labour. They did discover relatively little corruption. If business were subjected to that degree of scrutiny, I think it'd be in real trouble.

But for social political reasons, they introduced the Landrum-Griffin legislation, which included a bill of rights for union members. It goes into this kind of detail: Before a union campaign in the United States, the union newspaper has to be equally available in terms of space for both sides. It says that union staff cannot be used to politic for the incumbent officers. It goes on and on. I wouldn't go as far as they've gone, but I would go probably 75% of the way to ensure that unions are as democratic and as fair as they should be, given the powers we give them in our society.

Mrs Witmer: We recognize that there is a need for change. How would you have changed the process that's been used by the government to achieve change?

Dr Crispo: I don't know what you do. I really don't. They had a committee; it deadlocked. Looking back, we ended up named by Pearson and reported to God, but when Pearson named the Prime Minister's Task Force on Labour Relations, I was the second one named.

Harry Woods and I went to him, and he said, "Do you think we should put labour and management on the committee?" We said, "Well, do you want an honest report that is in no way small-p political?" "Yes." "Well, then don't put them on, because they're bound to dissent. We're going to be strong in what we say and we're going to say what we think is right. We may dissent among ourselves." I compromised. I should have dissented on one issue, but we were unanimous.

It happened we were all academics who really knew the field. What they did to keep us in bounds is that we had a labour-management committee we had to meet with monthly. We had to review all of our report before we put it together and we had terrible rows. We also had a committee of all the deputy ministers from across Canada with which we had to meet at least every six months. That was an interesting approach, but you'll say, "You're just trying to sell academics." I'm not; I'm trying to get away from something that's bound to deadlock.

This is a very contentious and controversial area. If you put labour and management in the same room and say "Agree," they're not going to. We found out what happens. It just blew up. I think there might have been some more sensible ways to approach this.

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Mr Carr: On pages 4 and 5 you were fairly critical of the government over the issue of the secret ballot with some of the language you put in there. I've asked some of the unions that have come in why they're opposed to it and they've given a lot of operational reasons why it can't be worked out. You put in here some of the certification processes and that the secret ballot is fundamental. Why do you believe this government and the unions are opposed to secret ballot provisions?

Dr Crispo: I have it in the article. The record is clear. Unions get enough cards to get a vote, and then they get fewer votes than they have signed cards. It happens

frequently—I don't know the percentage of cases—because they put pressure on individuals so they sign. That's one of the reasons we have petitions. I'd throw out petitions if we had votes. If there were automatic votes, I wouldn't have any of that junk around. I'd say: "25% signed cards, you get a vote, period. Have your vote."

But the record is very clear. They'll say, "We got them to sign and the employer heard and twisted the screw and the guy or gal changed his or her mind." It's both ways. They're both up to hanky-panky and skulduggery. I know why unions don't want votes. They can't win them. They can get 50% to sign cards but they can't win votes. They're unalterably opposed because they know they can't win votes. They're not democratic. They're not willing to give them a vote because they can't win.

Mr Carr: Isn't that why the public opinion polls that have been conducted where there's no pressure on either side historically were right about where we should be in terms of unionization?

Dr Crispo: I'm very dubious about public opinion polls. I don't think the public understands anything about anything. But if you say it's more democratic, they're obviously going to say, "Oh, I'm supposed to be a democrat so I'm for it." I don't have any faith in pollsters because they ask simple questions and they confuse people and people don't understand. The world is so complex.

I do a lot of public speaking, I do a lot of seminars. We have to have democracy, but I hate to think of some of the people who are voting. Most of them are not well informed. They don't understand the Constitution, they don't understand the free trade agreement, the North American free trade agreement. How are they going to understand this stuff?

Mr Carr: As an economist, somebody who has looked as this, you've heard some of the job loss figures. You said they aren't there. What do you see if this bill comes in? Will we see a dramatic change in Ontario's competitiveness?

Dr Crispo: I don't want to use the word "dramatic." I said and I meant I think it's the whole collection of labour legislation. If it's all enacted, this province is going to be the most liberal, progressive, radical—whatever word you want to use—in North America. There will be nothing like it.

Capital does shop around. I just met with an American who's doing a major study on the breakup of Canada. I said, "It hasn't happened yet." He was saying, "Do you know that Wall Street is more worried about the NDP's labour legislation than Quebec separatism?" I said: "That's a crock, unless you think of all the legislation. If you want to take all the legislation they're proposing, maybe it's serious in terms of the effect on certainty and stability." That's what you have to worry about.

Capital is the most mobile thing in the world. It shops around for where it gets the best deal. One of the things it looks at is the general socioeconomic political climate, and that includes your labour laws. If you take all the things this government proposes to do, I think you can say it will have a dramatic effect. To say that this law by itself would have that effect I think goes a little far.

Mr Derek Fletcher (Guelph): Thank you for your presentation. I've heard you speak many times and sometimes I nod when I agree and I have to look around to make sure no one's watching me do that.

You made some comments about some of the proposals that are in here, that some of them should be thrown out. You're not saying to throw out the whole piece of legislation; you didn't come out and actually say that.

Dr Crispo: There are not many things I'd keep in their present form. I was ready for a preamble; I think they went the wrong way on it, the principle. On certification, I fully agree with covering everybody, but why didn't you cover everybody? I did talk about restructuring bargain units. I'm on the board of the CBC and we're before the Canada Labour Relations Board to get 23 unions reduced—I've forgotten; it's some ridiculous figure. I heard we're still going to have 10. That's hardly a great restructuring, and we're there for months and months.

I've discovered the Canada Labour Relations Board is a bigger boondoggle than the CRTC, and I didn't think there could be a bigger boondoggle on the face of the earth. I think your labour relations board competes with both. They take months, weeks, years to sort these things out.

You know the Hydro case. It's still going on, I think. This really frightens me. I believe in the principle of restructuring. When bargaining units are obsolete and the parties won't do anything about it, I think the board should move in, in the public interest, when it sees a shambles, as in construction or CBC. I agree with a lot of things, but—

Mr Fletcher: Too fast, too soon?

Dr Crispo: Yes. You're going to say: "How can you say it hasn't been thought through? So much thought has been given." "The hell with thought. Just do this, guys. We got you in power. You can back off on all the other foolish things you committed yourselves to, like compulsory public auto insurance, but you're not backing off on this one, you hear?"

Mr Fletcher: I looked at the first sentence of your presentation. You could change the names, you know: "Brian Mulroney is so beholden to his big business friends that he has lost all sense of balance and fairness in bringing forward his North American free trade agreement."

Dr Crispo: No.

Mr Fletcher: I could say that. That's my opinion.

Dr Crispo: You can say that and I said at the end that I'm worried, in the last paragraph. I'm trying to be fair. I don't like what any political parties do when they get in power. I get along with opposition parties.

Mr Fletcher: You get along with everyone. I've noticed that.

Dr Crispo: But as soon as they're in power, they never talk to me again. I used to get along with Bob. He hasn't talked to me in years.

Mr Fletcher: I'm trying to get a word in; you won't let me get my words in.

The Chair: You and I have a lot in common.

Dr Crispo: There may be a club we could form. We may be wiser than we realize.

Mr Fletcher: You may have to sign up and then there'd be a secret ballot vote between the two of you.

I'm just wondering, have you ever been on an organizing drive or gone out on a union organizing drive at any time?

Dr Crispo: When I was very young I went out on a few, but that was when I was a student. I also went out on certification votes to see how they were conducted, but I would not claim—actually I had more students going on organizing drives in the old days. I used to have my students adopted by the unions for a term.

Mr Fletcher: What do you mean by the old days? How long ago was that? Is that 1950s, 1960s, 1970s?

Dr Crispo: In terms of having the students adopted by the unions for a term, these were MBA students. They had to go out and do a sympathetic analysis of a trade union's problems for their term project. It was a great thing to do and I had a small enough number of students. That would be in the 1960s and 1970s.

Mr Fletcher: Looking at the 55% automatic certification, we didn't do that. I mean, that was brought in by the Conservatives.

Dr Crispo: I didn't agree with it. We dealt with this. Let's go back. When we were on the Prime Minister's Task Force on Labour Relations, I wanted them to go to a 25% vote. I lost. We compromised at 35-65 instead of 45-55. Ontario went to 35-65 for a while. The unions cried blue murder because they couldn't get to 65 and they couldn't win votes, the same point you were asking. I never favoured 45-55. Don't hang me with that. I told the government long ago: 25 automatic vote. Then I sold my soul, compromised with my colleagues and went 35-65, but I backed off it.

Mr Fletcher: I just wondered because I keep hearing from the opposition. They're the ones who put it in in the first place. That's why it keeps getting me.

Mrs Witmer: You can change it.

Mr Fletcher: We tried to, but everyone in the white paper said they didn't want it.

Dr Crispo: I could say something about a wonderful old man. How can I call Bill Davis an old man? I think he's about my age.

Mr Eddy: He's getting there.

Dr Crispo: He's getting there. So am I. Willie Davis was a fox, and before every election he used to throw a bone to labour. He'd call in the Ontario Federation of Labour and say, "I've got a deal for you." God, they were so crazy. He gave them the agency shop after Quebec had done it and he gave them 35-65 back after taking away the 45-55. Again, it wasn't on the merits. It's playing politics. I get so sick of watching you all play politics. Do what's right.

Mr Fletcher: Do I still have some time? If you look at what you were saying about Wall Street and capital being mobile and if you look at some of the investments that have been made in Ontario recently, even with this legislation coming through, the auto industry and what it's been putting into the province—in fact I think there's a big thing going on today with Ford that's putting money in—do you

not also look at, if it's good enough for them and they're not worried about it, why should we be? Or is it that simple?

Dr Crispo: No. Look, take the anti-scab issue, which is not the central issue for me; it's the issue of votes and democracy. Ford doesn't care. They're not going to try to operate. Stelco isn't going to try to operate. For the big boys it doesn't mean a tinker's dam. They may have appeared before you in solidarity with the smaller employers and the other groups, but it's the smaller employers where the right to operate really means something.

I'm hardly a supporter of the Toronto Star, but when the Toronto Star said, "If we hadn't had the right to operate, we just would have had to capitulate to whatever they were demanding, because we couldn't take a long strike if we couldn't try to operate," I think you should listen to that. It's part of the checks and balances. It's the quid pro quo for the right to strike.

Don't tell me about Ford. Ford doesn't care about this legislation, I don't think. They may say they do but I really don't think—if you're big, you're going to try to operate anyway.

1210

Mr Fletcher: So the big investors aren't going to be scared away?

Dr Crispo: No, but that isn't the future. The future is small firms. There's no new employment coming from large employers in the aggregate; it's small business that's the future.

Now, Johnny Bulloch goes hysterical. He's my good friend. I don't get quite as worked up as he does, but I understand where he's coming from.

Mr Eddy: John, thank you for coming. It was an excellent presentation. I'd like your opinion about the use of arbitrators. Several of the presenters who have appeared have said that with the amendments there's going to be much greater use of arbitrators, we're going to have to have thousands of arbitrators named, resulting in the fact that the parties who should be making the decisions will be abdicating responsibility to arbitrators, with of course the unknown consequences. What is your view on that?

Dr Crispo: First of all, I'm very biased. I used to do arbitration, conciliation and mediation. The first thing I quit was arbitration. I never was disgusted with any procedure more in my life. I used to sit there with these two dumb lawyers. All they wanted was more days of hearings. One day we were finishing some hearings and these two lawyers came to me at recess and said, "We're going to finish today." I said, "Yes, I'm delighted." They said, "Well, we've booked tomorrow; we can raise some more issues." I said: "We're not raising any more issues. This is not a make-work project." That drove me crazy.

Also, do arbitrators always rule on the merits? I never thought so. I did, and that's why I wasn't a very successful arbitrator. They're worried about their batting average and their credibility and their per diems. I hate arbitration. Don't rely on these guys. I don't even like courts. The general point should be, knock heads together with every device you can and avoid arbitration like the plague. We're paying them a ruddy fortune.

I'm tempted to go back. When I'm senile, I'm going back to arbitration because I'll be most useful. I won't have a mind. I will just say, "I just did the last five cases in favour of labour; I'd better do one in favour of management or I'm not going to be here much longer." You're going to say, "That isn't true." Be naïve. I don't believe in arbitration. You've got to use the darned thing the odd time, but use it as sparingly as possible and don't encourage the disease. It's very expensive for labour and for management, and they don't get a compromise, they get a decree. So anything you want to say about arbitration you could say, but arbitrators hate me with a passion because I know what they're like.

Mr Offer: I want, if I can, to address the issue which I think you said was most important to you: the right to vote and the secret ballot type of situation. As I heard you make your presentation, I think you spoke about it taking the same form as a pre-hearing type of ballot?

Dr Crispo: Yes.

Mr Offer: I'm just trying to get an understanding as to what it is that you're asking for.

Dr Crispo: Unless the union asked for something to the contrary, I would make the pre-hearing vote almost automatic so you get a quick vote. I don't want any more time than is absolutely necessary for the employer to play games. I believe they both play games, and you can argue which side plays the most games. I want a vote as fast as possible. That's a pre-hearing vote, it's an interim vote.

Mr Offer: Okay. When you say there's an immediate or very quick pre-hearing vote and that might address a number of issues and problems that we have heard earlier, what happens at the end of the pre-hearing vote? I'm wondering if you can take me through it.

Dr Crispo: The problem with the pre-hearing votes—I've been out on them years ago and I don't think anything's changed—is that you get the contested voter. Management says, "That's management," and the union says—you know, it's based on whether they're pro- or anti-union. So you put it in a ballot and you put it in an envelope and you put the name on it and it goes in a separate pile, and they're all dealt with by the labour board when it decides who's eligible to be in the bargaining unit and who votes. So I understand all of that.

The way it works, you have the pre-hearing vote, then until they get to the hearing, which may be months later, knowing the way boards operate, the ballot box just sits there. If eventually it's decided they had enough support to get a vote, that this is the appropriate bargaining unit, these are the eligible voters, and these contested characters are dealt with one by one—are they eligible to vote or not? If so, you put the ballot in—then you open up the box and count it.

Mr Offer: Let me get this straight. You're saying that there's a pre-hearing vote. At the end of the pre-hearing vote, however it's decided—

Dr Crispo: You don't count the vote; it's sealed.

Mr Offer: You don't count the vote.

Dr Crispo: No.

Mr Offer: At the end of the day you eventually count the vote.

Dr Crispo: Yes.

Mr Offer: And if there is a certain percentage, then you go into a further vote?

Dr Crispo: No, no. If they get 50% in the pre-hearing vote after the contested ballots are in or out, wherever they go, they've won.

Mr Offer: Okay, then my question is, what is it that triggers the pre-hearing vote?

Dr Crispo: I would say 25% card-showing should get you a vote. Because I agree with the unions that employers do a lot of nefarious things. Now, if you have a vote, you get peace for a year. You can't have a vote every week. But you get a vote. That's what triggers the vote. I said the pre-hearing part, to me, should be automatic unless the union doesn't want it.

Mr Offer: This issue has been brought forward by a number of concerned individuals. Your suggestion could be addressed with just a small tinkering with what we have right now in the legislation. It wouldn't take very much to do to—

Dr Crispo: Oh, no, but you're going down to 25% to get the vote, okay? And you're making the pre-hearing vote automatic, unless the union declines. I think that's the distinction.

Mr Offer: Thank you very much. I appreciate that.

Do I have some time left? I have time for one question. I have a number of issues; I have to now pick.

You spoke about the preamble. What's being suggested is not a preamble, it's a purpose clause. You spoke about some of your concerns about what's not in it. I'm wondering if you can give us your thoughts as to whether there should in fact be a purpose clause as opposed to a preamble. Tell us what you think.

Dr Crispo: I think I was making a somewhat similar distinction myself, without using the same words. All I would have the preamble say is to encourage and facilitate, to establish the rules of the game and to protect the public interest, which I won't elaborate on. I'm not sure I'd put anything else in there.

When I read what is proposed about improving terms and conditions of employment—which the latest draft may have changed; I don't know what their last words are—I got so upset, I said, "Why aren't you putting in the other half of that: the efficiency, the innovation, the productivity and the competitiveness?" Now, they use some words but they won't use the word "competitive." That's a "no" word, you understand that. Philip is using the word "competitive" somewhat more than the other ministers, but it was a no-no for a while. But put it in there. No, no, don't put it in there: Stick with just the three things I said and forget the rest.

The Chair: Thank you, John Crispo, professor of industrial relations, University of Toronto. We thank you very much for coming here this morning.

Dr Crispo: Thank you for hearing me.

The Chair: You came on short notice. We appreciate that, and you've obviously provided some valuable insights for all of the members of the committee, I'm sure. Thank you sir. Take care.

We're recessed until 1:30.

The committee recessed at 1218.

AFTERNOON SITTING

The committee resumed at 1330.

The Chair: We'll be discussing Bill 40, an act amending the Ontario Labour Relations Act. We're carrying on until 9 o'clock tonight. The public is certainly invited, entitled and encouraged to come here to Queen's Park to view these proceedings in person.

WMI WASTE MANAGEMENT OF CANADA INC

The Chair: The first group this afternoon is WMI Waste Management of Canada Inc. Would the presenters of that submission please come and seat yourselves at a microphone and tell us who you are. The clerk has distributed your written material. Everybody's going to read that; that's going to form part of the exhibit. The most valuable part of these attendances is the exchanges between committee members and persons making the presentations, so please try to save enough time for that to happen.

Ms Nancy Porteous-Koehle: That's been a big debate between the two of us: Do we read the presentation or do we ad lib so we can have a lot of exchange?

The Chair: Some people highlight the presentation, knowing and trusting that committee members will read it, so as to save time for exchanges.

Ms Porteous-Koehle: I would like to thank committee members for allowing us the opportunity to speak to you this afternoon. We know you've been inundated with delegations and you've got another three and a half weeks to go.

My name is Nancy Porteous-Koehle. I'm the director of public affairs for WMI Waste Management of Canada. Mr Jack Cassari is our employee relations counsel, who will be doing the major presentation on behalf of WMI. Jack is the employee relations counsel and he handles Ontario, Quebec and the eastern United States, so he's well versed on quite a few labour legislations.

I have packages here containing information on the company, but as I look around the room, I'm sure all of you either received one at the reception in May or one was sent to your office if you were unable to attend, so you know what WMI is and what we do in the Ontario market.

As an environmental service company, we believe the committee should be cognizant of how this bill affects our industry, and very importantly, how it could affect the environment.

For instance, environmental waste management services are provided by union members employed by municipalities as well as private companies. During a strike, if replacement workers are not allowed, garbage does not get picked up, transported and disposed of, landfills are not operated, recycling does not get picked up or processed and the transportation of products to end markets will not happen, to mention nothing about what will happen at a compost facility during a strike; all to the benefit of the unions, all to the detriment of the environment. The health issues must also be looked at when it comes to strike and non-replacement workers.

Jack Cassari will elaborate more so on further amendments that we would look at.

Mr Jack Cassari: It's a pleasure to be here this afternoon to speak to you for a few minutes. Certainly, my intentions are not to bore you; you've probably heard about everything there is to hear on this legislation.

I will give you one, sort of, preamble; I hope you will indulge me. I live and reside in the United States and I will make some comments regarding the US. I understand and appreciate the fact that where we all live, we're very proud of those respective countries, as well we should be, and it's not going to be my intent in any way, shape or form to say to you that what we're doing in the United States is the model plan that the province of Ontario should be engaged in. Sometimes we reach a comfort level as to where we work, where we live and what we know best, and so I do use that role to a certain extent.

That's not to take away from the fact that I've been coming to Canada and negotiating labour contracts for 15 or 20 years, so I'm very familiar with Alberta, British Columbia, Quebec and Ontario. But as you read the draft, and when I speak to the US in terms of it being used as a model, I think it is something that needs to be discussed, and hopefully in our question-and-answer forum it will come up. I will go through the draft that you have. I'll highlight it and leave plenty of time for some questions and answers; hopefully, there will be some.

For you who don't know, I will tell you a little bit about ourselves. We are the world's largest refuse hauler, not only in Canada and the United States but worldwide. In Ontario, we employ 600 men and women, operate about 12 hauling companies or divisions and have a payroll in excess of \$26 million. As you're probably all familiar with, in 1991 we opened a recycling facility at \$25 million to process 500 tons per day of dry industrial, commercial, institutional material.

Many of our employees have close to a quarter of a century of experience in the waste industry and approximately 54% of those employed employees are union.

This being the case, Bill 40 is of crucial and paramount interest to WMI Waste Management and its continued growth in the province. At times, I will indulge in and hope you'll appreciate that what I talk about is from a practical experience standpoint. I think that's the effort and direction we would go in today.

First, in the collective bargaining process, it goes without question that collective bargaining is simply a matter of economics. The relative economic strengths of the parties are going to determine the outcome of any collective bargaining process. I don't understand and I'm sure there'll be some input how you can put any artificial barriers or any third parties in that process and make it an effective process.

From a business concern, we are desiring to grow in an ever-increasingly competitive marketplace. I don't know how many are familiar with the waste industry. In Ontario, there are probably three major haulers and there are a multitude of independent, small, family owned and operated, independent haulers that are not unionized at all. So if you say to an employer that in a strike it cannot replace its

employees, I don't know what you're left with. I know you've heard that from probably every employer who has presented before you. But in terms of the local unions in the province, they're all branches of US unions; you have to take that fact into consideration.

It's my understanding that a lot of the legislation that has gone on, a lot of the discussions that have taken place, have primarily used Quebec and even Europe, to a great extent, as examples. That is very shortsighted. I come to this country quite frequently and I'd be willing to venture that at the airport in Toronto you run into many more American businessmen than Quebec businessmen. So when you start to look at things, you have to make a comparison, a little bit, of what is transpiring in the States and what is going on. In the States, it's far from a perfect world—do not get me wrong—but in the States, in most situations you have to be able to run your business.

I will ask a question regarding the garbage industry, for example: Peter, what happens if we cannot pick up the garbage? You're saying, "You cannot use replacement workers." In the States, we talk about permanent replacements; legislation in Ontario is not even going that far. All we as employers are asking for is that we be able to perform our business, to service our customers. We have to service those customers.

If you, as a government body, tell us we cannot pick up that waste, you in effect have dictated economics. We're not going to grow when the strikes are over with. We're going to lose business to the small independent haulers that are non-union, that do not provide the benefits. That is going to happen, and/or we're going to close the door. The last thing that should come out of this is that we certainly are not going to look at growth in Ontario. How can you? It would be ludicrous; it would be absolutely ludicrous.

I'm very interested to hear some of the rationale that's gone behind the formulation of this bill. I understand this has basically been done. I'm not here to really bore you at all. I understand this legislation is moving forward; it's about a done deal. So I feel like I'm beating my gums, to a great extent. I appreciate the opportunity to be able to beat them for another few more minutes to indicate that we feel this is important legislation. Again, please take into consideration my biases.

1340

In a sense, it appears to me that the government of Ontario has replaced labour unions; you might as well outlaw labour unions. If I were a dues-paying member in the province, I'd send my dues to the government, because what is the union doing for me, if 55% of a workforce can sign cards and be automatically recognized without any information, without any communication, without any discussion as to the pitfalls, the positives, the pros and cons of unionization?

Folks, you're dealing out there primarily with a lot of employees who are not PhDs, and you are telling employers and corporations: "If 55% of your employees sign cards, we won't even have a vote. You will bargain." Then on the other side of the bill it says, "You don't even have to bargain, Mr Union."

This first-contract arbitration makes absolutely no sense whatsoever. You're saying, "Okay, you automatically organize the workforce, automatically recognized at 55%; you've got yourself a union," and then you tell the union, "You don't even have to bargain with the company, don't bargain, get a 'no' board, no discussions, go to a strike and give this all to an arbitrator."

We have a recycle facility that we spent \$25 million on. We employ 80 of your constituents. We provide them with excellent benefits and excellent salaries. Now you tell us, after this capital investment went in, that if 55% of these 80 employees sign cards, we have a union; it is automatically recognized. Then you tell us, "Hey, let's not even engage in the process of negotiation, the process of collective bargaining, to educate one another as to our needs, but we'll have a strike, and during that strike, while the refuse is piling up, you won't be able to work."

I've been in there for 15 years. I don't know, I must be naïve, but I've dealt with about every union in Ontario and I think they've had the better part of the deal for 15 years. We've had one strike in Ontario in the past 10 years. It lasted three days. Obviously, we have relatively good employee relations and we as parties are doing a relatively good job at the collective bargaining table.

Some of this makes absolutely no sense at all to me and I hope somebody, before the afternoon is over, can educate me as to what is going to be gained. What you're going to do is increase the non-union workforce; is that the purpose of the bill? If the non-union, little independent haulers pick up all this work during strikes, who's gaining by this legislation?

Then you turn around and say, "If you get a new facility, it has to be merged under the old collective bargaining agreement." There's got to be some reality in life here, folks. Do you understand and appreciate what's going on in society? For example, we have Port-O-Let drivers. Port-O-Let drivers, because of the nature of the business, because of the industry, are paid less than our commercial haulers. We acquired a Port-O-Let company. We have a unionized company on Fenmar Drive. That is merged in; the rates are the same; no negotiations take place. What are the benefits? Why would somebody go out and make an acquisition under those circumstances?

It seems to me that a lot of this legislation just doesn't seem to fit into the practical world that I live in and deal with on a daily basis; that's the reality of the situation. Certainly, I'm not naïve enough to not understand why we're here.

I know many of you people have backgrounds in labour unions. Let's talk up front and honestly for a second. As a labour leader, as a business agent, you're bargaining a contract. You are going to get the last, best and final offer from the company and you're going to take that back to your members and you're going to attempt to sell it. When the members now know they have a right to strike and not fear being replaced, what do they have to lose? As a labour leader, I would never go back without calling a strike, because that membership is going to send you back, saying: "Hey, we're not going to ratify this contract. Let's strike. Let's make sure we get every pound of flesh out of them."

You people who have been involved in the labour movement know that the union is a political animal. You must adhere to your membership to get re-elected, and to get re-elected, what do you do? You've got to deliver the goods. I would never go back to a membership when that membership is going to say: "Hey, we haven't struck them. Let's spend a day or two on vacation. Let's get some sunshine, and by doing this we'll extract a little bit more."

Where is honour and credibility in negotiation any more? Negotiation is a process of education of that membership, of that union understanding that industry. It's absolutely critical. It takes years and years of work, and then we say through some purpose clause that we have in here—I'm not quite sure I understand it—that we're going to get more productive and more efficient and we're going to have this wonderful world, and this wonderful world is going to be shoved down the corporation's throat.

If you come to me and you say, "You're going to take the agreement; we're going to arbitrate it"—arbitrators have little idea of what the business is all about. Arbitrations can last for weeks, and when you get into these types of arbitration cases you're going to present a lot of information. They're going to be spending a lot of time, a lot of witnesses. What's the membership doing during the meantime, while you're waiting for this guy, who knows nothing about your particular industry? He's going to decide the future of the corporation, the employees and the stockholders, a guy who we're going to get, who we're going to select to arbitrate this first contract. Then we're going to have a purpose clause in there. It's going to say, "We'll have this beautiful world; we'll have this wonderful, beautiful world. We're going to be more efficient. We're going to get together a lot better," based on a concept—which sounds like a contradiction to me—where an agreement has been forced down an employer's throat.

Now you're going to ask the employer, "Jeez, be efficient, be productive, be nice, be cooperative". He's going to say: "How in the heck can I? I've got a contract that's been interpreted and provided to me by the labour arbitrator, who's given me the terms and conditions of my employment. He's dictated my policy to me, and I'm the one who is putting out the investment in this."

I'll give you this: I don't know every nuance of your labour legislation, so I could certainly be missing a lot of the things, and maybe there are answers to the questions I have. But from a practical, everyday standpoint, I do not see how it works. I really do not see how it works and how it's going to be made to work.

To make a couple of closing comments, I think what you need to consider, as I've said before—maybe I'm being a little redundant—in terms of organizing efforts that at 55% we have automatic recognition, I don't understand that philosophy. I've always been troubled by that somewhat. I think in the States our campaigns are too long and too lengthy, organizational union campaigns as well as our political campaigns, which we're in the middle of right now.

It is very important, and I need to stress this even to you who were involved in the labour movement to a great extent, that this is not an easy decision for an employee. An employee should have the right, as we all should have

in this society, of a free and unencumbered decision, and that decision should be made with as much information as one can possibly have at one's disposal. People change from day to day, as you all know in your constituency, as do the people who sign cards and realize that, "I may be signing, and I have to adhere to bylaws and I have to adhere to a constitution." In terms of the union movement, there are certain things that go on.

You cannot fully inform, nor should an employer be expected to deal in a situation where its employees are not fully informed and appraised of the good, the bad and the ugly. And certainly within the parameters of the law, whether it be the province of Ontario or the state of Alabama, those employees worldwide have a right to their own dignity and to their own social welfare for believing in their own philosophical concept of what is best for them to make a decision fully, fully informed.

I think what you have before you—and it appears we're all rushing to judgement on what we are going to be facing as employers—is dealing with a very unique concept. I'll be honest with you, ladies and gentlemen. I don't know what purpose I would serve by coming up here to represent a corporation in collective bargaining; I have no idea. I don't see the good-faith concept. There is no good-faith concept in negotiations. I have been born and bred that that is the concept: good faith, an attempt to compromise, an attempt to move, an attempt to understand, an attempt at education.

If that employee doesn't understand fully the nature of the business, how can he be a valuable asset? Collective bargaining is an educational experience. It has to be, and we are saying: "Let's forget it all. Let's not worry about it."

1350

I guess what we'll do is educate them on a picket line. But I don't see how you can, because we cannot run our business by being closed. We absolutely cannot, unless you're going to carve out some essential-services concept or definition for the waste industry in these bills.

I've generally skimmed over the document I had; I tried to touch the high points. I'm sure I've missed a few. When I leave the room, as usual I'll wish there were a couple of comments I could have made or remembered to make.

I sincerely appreciate this opportunity. Like I said initially, I appreciate your indulgence, because I, like everybody else, am proud of the country I live in and I don't like anybody coming in and indicating to me that what we're doing is different or somehow a unique concept.

I've dealt in this country for a number of years. Canada is a wonderful place. We've had great relationships with the Teamsters, with the Operating Engineers, with a whole host of unions in this province. As I indicated before, we've had one situation back in 1984 of a three-day duration, and any time you have a strike of three-day duration, somebody made a terrible mistake. It could have been us as easily as the local. And we've grown the business. Only 600 men and women, I guess, but we service a vital need in this society. As you know, the environment in Ontario, like elsewhere in the world, is becoming very crucial: It's vitally important that we protect our environmental

resources and the health and safety of our public as well as ourselves.

With that, I'll conclude. I'd be happy to take any questions or comments.

The Chair: Mr Huget, two minutes.

Mr Huget: Thank you very much for your presentation. First of all, I refer to your comments about the strike situation and labour disputes and the willingness—or at least the perception on your part that perhaps workers would have nothing to lose and that it becomes sort of an automatic incentive to want to go on strike.

I have to tell you, I was a member and indeed held several executive positions with a Canadian union that has no United States affiliation, and during my term of office and to this day we have never had a grievance, since 1978, proceed to arbitration. There has never been a labour dispute. In my view, the cooperative approach with the particular union and the company involved is somewhat of a trendsetter in a pattern companies are following in other locations.

I am particularly disturbed by your comment that the worker has nothing to lose. Indeed, strikes and the threat of strikes are taken very seriously and indeed the worker does have something to lose: It's called his salary. That is quite a hardship for many workers and, I would dare say, a decision they wouldn't take lightly.

I'm not criticizing your presentation, sir, other than I think there is inherent in the presentation and in the situation a level of confrontation and adversarialness in the system that I don't particularly like, and I know there are unions and companies moving away from that process.

My specific question is, do you have organized workers and unorganized workers in Ontario and Quebec?

Mr Cassari: Yes, we do.

Mr Huget: What are your relationships with those workers now in Ontario and in Quebec, and in what specific way would this legislation harm those current relations?

Mr Cassari: Our relationships are excellent in both our union and non-union situations in both of those provinces. I guess it goes back to how it would harm those situations. Obviously we choose to disagree on a fundamental aspect of the situation. I'm not so sure not having a grievance since 1978 is a great thing. I think sometimes grievances are good and necessary and they do tell management a great number of things. The fact that grievances aren't filed doesn't indicate in my mind that a peace-loving situation exists.

Mr Huget: A grievance to arbitration, sir. There have been many grievances, but none has proceeded to arbitration.

Mr Cassari: As I said before, sometimes arbitration cases are needed and necessary, I guess.

The fact that an employee gives up a day's pay is a great hardship. I think the problem you have with that concept in dealing with employees on a nationwide basis is that most employees are willing to give up a few days' pay when they see that the outcome may result in a tremendous economic benefit to them. I don't think most employees look at it that sophisticatedly: "Being off work a day or two, I'm going to lose a paycheck." I think they look at it,

and in light of this legislation they're certainly going to look at it, as, "That's all I risk, and I'm certainly going to get more." And what advantages does an employer have to hold out? It doesn't. An employer has no advantage at all.

Mr Eddy: Thank you for your presentation. We've had other presenters concerned about the matter. The Municipal Electric Association and the Ontario Good Roads Association were before us with a view that there are services that should be declared essential. My own view is that if you're going to provide for carrying on essential services during a strike, it's awfully important to have all the details outlined prior to the legislation being passed. Would you expand on the point of essential services? Because it's collecting garbage, which many people would consider a very essential service. I would.

Mr Cassari: Let me start and then I'll defer to Nancy real quick as a follow-up. Absolutely. Garbage is an essential service. Hospital waste is certainly an essential service. I can't understand how it would not be considered. We have the solid waste. We have waste that needs to be picked up, hospital waste, doctors' offices, clinics. That stuff has to be picked up, obviously, and I would think for the health of a community it certainly falls well within the definition of what I would consider to be an essential service. You certainly cannot have garbage piling up, and rats, and children who are on their way to school who are walking through mounds of garbage and the things that obviously attracts. That must be picked up and it must be picked up immediately.

Ms Porteous-Koehle: With the essential-service designation, I think we also have to look at what we're trying to do now, the government as well as private enterprise, in getting the recycling, the 3Rs, in place. The concern is that we're just going to get those markets in place when—because we become a feedstock; our recycling facilities become a feedstock for other manufacturing plants. It's very important that that feedstock be gotten to, and we're in such an infancy stage right now with recycling that if we jeopardize any relationship between the market and the supplier, we could jeopardize Ontario's market worldwide. I think we have to look at that as well as the health aspects of the environment.

Mrs Witmer: Although you've recommended here that Bill 40 be passed on to impartial individuals or a commission, the government's indicated that that won't be the case and that this really is the committee of final consultation. What recommendations could you make, what amendments would you suggest, to make Bill 40 more fair and equitable, and also to help restore harmony in the workplace and create a better working environment?

Mr Cassari: The replacement issue obviously has to be readdressed. From a practical consideration we'd all be naïve to think that is really a workable solution, so that's an element that definitely has to be rearranged, rediscussed and readdressed.

Also, the 55% criterion is obviously naïve. In the States we have 30% in terms of going to an election. You're proposing 40%. Certainly that causes me no great concern. Going from 45% to 40% seems like a workable

solution, so I don't have any great heartburn with that. When you're talking about something that's automatic, the 55% is another concern to employers. I think it has to be re-reviewed in terms of the realistic environment we all deal in.

I'm not so sure I truly understand some of the elements, as I tried to point out, such as the dual purpose concept. The property situation we don't necessarily have a real problem with like the retail chains would, in terms of people coming out and causing the public concerns in terms of handbiling or picketing or what have you.

As I tried to mention before, I think it is a little contradictory when you say you're going to try to get an employer to work in conjunction and cooperation with a union while at the same time you've really forced this employer to eat crow to a great extent, at least in my mind.

I just don't understand how the first-contract arbitration would work at all. It makes very little sense, and we would be very reluctant to turn over our capital investments to—arbitrators are generally attorneys who do other things, engineers who do other things, professors who do other things, and you're going to call these individuals in? If you took a look at our Etobicoke recycling situation, you're talking about an investment of \$25 million, 80 employees—by the way, I'm not knocking attorneys, professors or engineers. I've just blown the whole thing, haven't I? I'm just saying when you turn it over to those folks, I don't know what you're going to get. How much education can you give a college professor in terms of him making this monumental decision and all the facts you're going to present to him?

I think the tendency is going to have to be to come down on the side of labour. I think that has to be seriously reviewed. I don't see the practical aspects of that working at all in day-to-day labour relations. You're going to get an arbitrator who's relatively sophisticated within the confines of the collective bargaining agreement. If you look at something like the public education system in the United States, I suppose, you're going to go into a fact-finding conference and then you're going to have people who are simply dedicated to a particular industry. From a practical standpoint, I don't see how that comes together at all.

The Vice-Chair: Thank you both for your presentation. You've played an important part in the process. I appreciate your views and recommendations and trust you'll stay in touch with the committee as the process unfolds. Thank you very much for taking the time this afternoon.

Ms Porteous-Koehle: Thank you for your time.

1400

ONTARIO RESTAURANT ASSOCIATION

The Vice-Chair: The next group is the Ontario Restaurant Association. Could you please come forward. I would ask you to identify yourselves for purposes of Hansard and then proceed with your presentation. If you could leave about 15 of the 30 minutes allocated to you for dialogue with the committee, it would be appreciated. You can proceed at your leisure.

Mr Paul Oliver: Good afternoon, ladies and gentlemen. On behalf of the Ontario Restaurant Association and the hospitality employment task force, I would like to say that we're very pleased to be here today to talk about some of the specific issues that are confronting us relative to Bill 40.

My name is Paul Oliver. I'm director of government affairs for the association. With me is Bill Dover, who is a director, and Victoria Zipeto, who is an owner-operator of a Pizza Pizza franchise and also a member of the association.

As Bill 40 is a quite detailed and extensive piece of legislation, we can't possibly address all of our issues today in about 20 minutes. For that reason, we'll try to focus our comments only on a few specific issues.

I think our formal response, going through the technical aspects of the act, has been handed around, as well as a copy of our presentation. As you'll see from our response, we outline a number of constructive proposals which we've put forward, as well as the areas of the bill we do support and the ones we have concerns about.

The Ontario Restaurant Association is very concerned that Bill 40 will undermine investor confidence and add additional job losses to the staggering job losses of more than 60,000 that have been lost in the last 24 months.

Members of the hospitality industry are very concerned that the proposed changes contained in Bill 40 are designed for large, traditional industrial and manufacturing operations and fail to recognize the needs of small, independent operators who comprise about 80% of the industry.

In the hospitality industry, most operators do not have a separate human resources department, cannot afford labour relations experts, rely on labour from family members and manage their operations in a very hands-on fashion.

The government has often indicated that it is undertaking this review of the Labour Relations Act to ensure that fairness and balance are put into the system. Unfortunately, Bill 40 fails to adequately address fairness within the labour relations system. For a small owner-operator facing a large, well-financed union before the board, there is simply no fairness.

One of the most concerning elements contained in Bill 40 is that which places restrictions on the use of replacement workers during a work stoppage, especially restrictions which ban the use of family members. This proposal would have a devastating impact on the hospitality industry, just as it had in Quebec.

This proposal would also severely impact our suppliers and, in particular, create thousands of job losses in the agricultural community. Members of the Legislature who represent rural ridings or ridings with food-processing jobs should be particularly concerned about the impact of Bill 40.

Currently, the foodservices industry purchases billions of dollars worth of agricultural products in Ontario. Approximately 40% of all food dollars spent in Ontario are spent by consumers away from the home at foodservice establishments.

Because Bill 40 is designed to shut down employers such as food distributors, food processors and packaging operations, foodservice operators cannot afford to risk an interruption in the flow of food to their establishments.

This will force many foodservice establishments to source agricultural supplies from outside Ontario. The risk in buying Ontario agricultural products, if Bill 40 is passed in its current form, will simply be too great for foodservice operators.

Already many foodservice chains and foodservice distributors have lined up tier 2 suppliers to replace Ontario products in the event Bill 40 is passed. This will undoubtedly mean job losses in Ontario. This is not something that foodservice operators like to do or want to do, but their survival dictates they must.

In the hospitality industry, any disruption in business, even an interruption in supplies or a closure for any reason, threatens the long-term viability of the establishment. Because profit margins are so slim and our reliance on cash flow for survival is so great, even a short-term interruption could force a small establishment to close permanently. During a work stoppage our industry cannot draw upon inventory or cash reserves to survive, because they simply don't exist. Any interruption in business for a hospitality establishment threatens the continuation of the employer, as well as threatening our suppliers and related businesses.

Mr William Dover: Good afternoon. My name is Bill Dover and this afternoon I would like to take the opportunity to talk about an entrepreneur who has approached our association with a bit of a dilemma.

This individual has been offered the rights to bring a full-service restaurant franchise to Canada. He has also been invited to have his pick of provinces because of the person's reputation. The proviso, though, is that he has to open two stores in the first 18 months and another eight in the next four and a half years. This is a fairly common timetable if you want to protect the rights to own a franchise for a given territory. Each restaurant will cost approximately \$1 million, excluding the cost of building the shell, and each will employ between 80 and 100 people.

The viability of this project and of most operations in the foodservices industry rests on continuous cash flow. It has to be uninterrupted cash flow. If the changes in Bill 40 are adopted, the possibility of a work stoppage in the restaurant or within a major supplier becomes critical. Especially during the first three to four years of bringing a new concept in, cash flow is imperative to keep the business running.

If you get a five- to ten-day shutdown, especially a shutdown which covers two weekends, the cash flow could be critical enough that one would default on the loans and the rent. I think it is important to note that most operators that are presently operating, let alone a new venture, cannot last ten days without cash flow.

When you bring in a new concept, it is quite common now that you bring in a lot of pre-processed foods. This has to be custom-done by a food processor. Generally when you're small, like up to 10 restaurants, you can only have one supplier that will prepare these products for you custom-made, and you have a pre-printed menu. So if there's an interruption in the supply of the pre-prepared products, you are going to have blank spots on your menu that you can't operate with.

Once again, this brings up the concern that Paul mentioned earlier, that if a supplier goes down and there's an interruption to the supply of the products, this is pretty severe. It would be prudent then for the restaurateur to have the products prepared outside of Ontario, where he could always get the product and bring it in. Now, this is contrary to the policy of the Ontario Ministry of Agriculture and Food, which is making great advances in working with the whole agrifood industry to integrate and perform partnerships to build both ends: the service end, the growers, as well as the processors in between. I think it's really sad that we have to look outside the province to ensure source of supply.

The investors I'm talking about are faced with a simple choice: Do they invest in Ontario or do they pick one of the other provinces that have been offered? The 1,000 jobs will go with it, plus the millions of dollars in construction. It just might be too big a risk. If Bill 40 is passed, the risk associated with investing in Ontario may simply be too great and this person will take his investment elsewhere.

1410

Ms Victoria Zipeto: I'm Victoria Zipeto. Since I have only a few employees besides my husband and my daughter, who also work in our store, the chances of the store becoming unionized are very slim. This does not relieve my fears about Bill 40 and the devastating impact it could have on my restaurant and my family's livelihood.

As you probably are aware, Pizza Pizza has a central phone number; that is, customers call a central order line and it is processed through a computer and sent to the nearest store. If the central nervous system is shut down because of a strike, we will be out of business within two to three days. Some 90%, or 80% at the least, of our business comes through our phone service. The walk-ins will not make up our difference. If it happens that way, we would be gone in two days.

Also, without cash flow, we can't operate our store at all. Unfortunately, this is not an isolated situation. My store could also close because of a work stoppage at a food preparation centre. A trucking strike would also cause us to stop, or one at other suppliers as well. As well, I could have my business severely curtailed as a result of picketing by adjoining employers. It would also be impossible for me to go through a protection board hearing so I could have the picketers removed from my front door. As a small operator, I simply do not have the resources to do it.

Mr Oliver: It's important to note that this is a problem that impacts major foodservice companies, with over 80% of the head offices of food companies located in Ontario. The central operation systems, including purchasing, reservation desks and payroll departments, are also located predominantly in Ontario. Due to the impact of Bill 40, many of these operations and their accompanying jobs may have to be moved out of Ontario. Recently, several major hotel chains have already moved their central reservations desks out of Ontario.

The hospitality industry recognizes the replacement worker ban is a very contentious and polarized issue. As you will see in our formal response, the task force and the

restaurant association have developed an alternative which we believe will accomplish many of the government's goals while preserving the long-term viability of the hospitality industry.

Since the goal of the replacement worker ban has been proposed so as to limit the impact and the length of long-term strikes, the Ontario Restaurant Association has proposed a phase-in of the replacement worker ban only if the strike drags on and only if the parties are not bargaining in good faith. If they're bargaining in bad faith—we see it moving forwards and moving backwards—we propose that the replacement worker ban would not go into effect until after the first 30 days of the work stoppage.

If either party is bargaining in bad faith, then the 30-day implementation period could be moved forwards or backwards, as the board determines. This would ensure that an operator in our industry would not be forced to close as a result of a short-term strike.

We believe that since most strikes are resolved in the short term, and in fact in a shorter time frame than in Quebec, there is no need to threaten an operator's ability to provide employment with a complete shutdown or to force operators to source agricultural products out of Ontario. The replacement worker ban in Quebec has had a devastating impact on our industry and it will have an equally devastating impact in Ontario. To protect jobs in the hospitality industry and in Ontario's agricultural sector, we strongly encourage you to adopt this 30-day proposal.

The certification process is also a major concern to food-service operators. We recognize the government believes that petitions and an individual employee's right to revoke union membership are often used by managers to delay a certification process. But in fact they are mechanisms which protect individual employees. This government should not eliminate individual employees' rights in a quest to increase the power of unions. The Ontario Restaurant Association believes that employees should never be denied the right to change their minds.

To ensure that the rights of individual employees are not reduced, while achieving the government's objectives of eliminating petitions, the task force proposes that the government simplify the process and adopt a certification process that would require a secret ballot supervised by the Ontario Labour Relations Board. If the union is supported by more than 50% of the employees in a board-supervised secret vote, union certification would be granted.

We believe a free, secret and democratic vote for union certification would be supported by the vast majority of people in Ontario. In a quest for fairness, the Ontario Restaurant Association strongly encourages you to streamline and simplify the process with the adoption of this vote.

As part of the certification vote process, the association encourages the adoption of a mechanism which would provide for free and open meetings between unions and employees, and employers and employees, before the certification vote takes place. The meeting would take place under the supervision of a board representative. The board representative would also be available during those meetings to answer questions and ensure that employees have

as much information as possible. We believe this would dramatically reduce workplace conflict.

The Ontario Restaurant Association recognizes that the government feels it is under pressure to move quickly to pass Bill 40 so as to fulfil certain promises. But because of the profound impact of this legislation on the long-term health of the Ontario economy and the potential job losses in the hospitality industry and the agricultural sector, the association calls upon the government to undertake a sectorial employment/economic impact study of Bill 40 that will evaluate the impact on the hospitality and tourism sectors.

Because of the paramount importance of undertaking this research so as to ensure that major policy decisions are not made in the dark, the Ontario Restaurant Association is willing to pay for the entire cost of this impact study, provided that representatives from various ministries, including Agriculture and Food, Tourism, Labour and Treasury participate in the study and that the government defers Bill 40 until the results of the study are made available to everyone.

The Ontario Restaurant Association has already discussed the possibility of a hospitality employment/economic impact study with several consulting firms and has been assured that it can be reliably undertaken by on a sectorial basis.

With thousands of jobs at risk, we believe it is imperative that the proper evaluation is done before this legislation is passed.

We thank you for the opportunity to appear here today, and we hope that you will adopt some of our amendments.

There is one comment I'd just like to make. One of the issues we didn't touch on and that's in our submission is contract catering, which impacts many of our members. In our submission, we support the principle of contract catering, the rollover effect. We have identified several technical problems with the current wording of that, and one of our member companies, Beaver Foods, has made a request to appear in London at your hearings. I hope you will allow them to appear, because it wants to specifically address the technical aspects of that.

The Vice-Chair: Thank you very much. Questions? Mr Offer, you have about three and a half minutes.

Mr Offer: Thank you very much for your presentation. As you were reading the shortened presentation, I was taking a look through the longer presentation. I can certainly see a great deal of work, with the proposed amendments or suggestions for change that have been put forward. Certainly, the issue that you brought forward on the contracting is one I am looking forward to reading in some detail.

I basically have two short questions. We all know that there are now service restaurants where you dial one number and you don't even know exactly where that goes, but all of a sudden, within a certain amount of time, something comes to your door. I'm not going to say any names, but it does, and it's magic, however it happens.

The question I have is with respect to replacement workers. In the event that there would be a ban, as is proposed, those people who are dialling that one number

are not going to get anybody on the other end, and I certainly think we could see what will happen to all the outlets throughout the province. But my question is, why wouldn't that company, whatever it is, just move that place out of the jurisdiction so that this could not happen?

Mr Oliver: Well, there are several companies that have this. I'll use one example.

In the United States, Domino's Pizza has regional telephone numbers throughout the United States. They have the technology available, and it's available to all companies, to centralize those numbers in one jurisdiction in North America. You can phone from Los Angeles or New York or Washington, and it may be in Illinois or maybe in Kentucky or wherever. The customer doesn't know and he doesn't care where the thing is going.

That's the situation that a lot of operators in Ontario have to face. They cannot afford to have the risk in Ontario, where they can be shut down, so they'll be looking at centralizing those facilities and it won't be in Ontario.

It also will mean that we won't be getting those potential jobs as other companies centralize in North America. They can't afford to put into Ontario either. We've already seen the central reservations desks from major hotel chains leave Ontario. You'll notice that none are in Quebec, and that is directly as a result of the replacement worker ban in Quebec.

1420

Mr Dover: I would like to add to that, if I could. Canadian Pacific Hotels and Resorts, Canada's largest hotel chain, has just moved its central reservation office to the United States, and that really upsets me as a Canadian. But as a shareholder, they couldn't afford to put a stranglehold on their hotel system.

Mr Offer: Could I ask a very short question, Mr Chair?

The Vice-Chair: One minute, Mr Offer.

Mr Offer: Can you please share with us your thoughts on the basis of picketing and organizing on private property, third-party property?

Mr Dover: For our operators it has a tremendous impact. A lot of food service establishments are located in shopping malls, where this type of picketing would go on. Even if it isn't picketing that restaurant or that food service establishment, it creates a serious problem because you can't define where picketing happens. In a food court, for example, where is the entrance and exit to a restaurant there that won't impact eight or 10 other restaurants? As well, there's the potential that a department store could be picketed and they block off an entire mall.

The proposal we've put into the package there would require that if you want third-party picketing—we are not opposed to that principle—you would have to go to the labour board first to get an advance ruling. The board can make a site-specific ruling and say: "This 20-square-foot area is where you can picket. You can't cross here, and you can't block off other employers." That would protect the jobs of the other merchants and their employees in a shopping mall.

Mrs Witmer: I would like to thank you, Mr Oliver and Mr Dover and Ms Zipeto, for an excellent presentation. I think it's one of the most honest and sincere presentations that we've heard, and it's also one which, I think the government members would agree, gives some very positive, constructive recommendations for amendments, which I hope the government will give very serious consideration. You have certainly acknowledged the fact that although Bill 40 perhaps responds to the union operation within a Stelco or Ford plant, it is not very sensitive in dealing with the needs of the hospitality sector.

As well, you've been able to demonstrate very effectively today that because of Bill 40 we've already lost jobs in this province, with people moving their 800 numbers and what have you south of the border, and certainly there is a possibility that more jobs will be lost. Do you have any idea at all as to how many jobs have already been lost in the hospitality sector because of moves that have been made simply because of the uncertainty regarding this legislation?

Mr Oliver: It's very hard to quantify a specific number, because not only are we losing existing jobs but investment decisions are being made not to develop facilities and operations in Ontario. I know of several large chains that have done that. I know that some of the major food service companies which cannot afford to be shut down have also made contingency plans in the event that this legislation is passed. Of what we've seen so far, I think the numbers that we have are only the tip of the iceberg.

Mrs Witmer: And certainly many more will follow. You made reference here to the fact that many people in your industry are small, family-based type businesses and simply don't have the financial resources and the access to labour lawyers and what have you. What would you suggest that the government could put in place to help employers deal with this labour legislation when you don't have the resources yourself to access this? You're barely making a profit from day to day.

Mr Oliver: In our response to the discussion paper we have recommended that a whole series of board facilitators be implemented as well as an information line that would be available to small employers and employees to call up and simply get legal advice over the telephone.

A precedent for that is what they have for the pay equity legislation now. They also have this on the labour side, sponsored by the University of Windsor, where if a union organizer walks in a small employer's front door, all they have to do is pick up the phone and find out whether they have to let him in the front door, so that they don't start chasing him off the front patio, things like that. It's going to reduce a tremendous amount of conflict if all the employer has to do is pick up a phone, call and ask for advice. That isn't available now under the current labour board assistance.

The other major concern we have relative to small employers is that the labour board is open five days a week. The third-party property thing, the legislation would take away the right to go to the court system to get an injunction if they're blocking your front door, even if Eaton's or another department store was being picketed but they were

blocking your restaurant. That would be taken away. We think there have to be more resources put into the labour board to go out and facilitate that. If it's a minor problem, they can go in, sit down with the employee, the union, the employer and resolve it. Then we don't have to go through the whole process of long, protracted board hearings. The goal should be to simplify the system, not put a whole bunch of administrative burdens on top of employers.

Mrs Witmer: It was an excellent presentation. I hope the government will be very sensitive to your very special needs in the industry.

Mr Ward: I'd like to thank you for your presentation as well. It's my understanding that in your association there are some restaurants that have unionization in existence. The employees that are unionized: How would you classify their relationship with the restaurant owners? Are they good relationships? I don't recall reading about very many strikes occurring. It seems to me there's good cooperation.

Mr Oliver: In our industry the level of unionization is very low.

Mr Ward: I realize that, but the ones that are unionized.

Mr Oliver: What I was going to say is that the statistics that appear for the food services industry directly represent the unionization in the contract-catering side, which has 60% to 70%. There's a handful and I'm sure maybe 25 restaurants throughout Ontario outside of one major chain that have unions. I can point out to you that employers that are unionized have looked at ways to eliminate jobs in the industry.

Mr Ward: But I'm talking about the employees. It seems to me that there's been cooperation.

Mr Oliver: I agree. It's in the best interests of the employee to enhance the workplace, but with the strike vote mechanism that you have in place.

Mr Ward: No, I'm talking about in today's environment. They act responsibly, right?

Mr Oliver: Depending on which union you're dealing with, in particular. If it's a union that understands our industry, it is much better at accommodating the needs of its members and employers because it recognizes the needs. We've seen a lot of unions that are trying to get into the sector bringing in smokestack industry contracts and trying to impose them on a service sector that's, for example, seven days a week.

Mr Ward: Who would that be?

Mr Oliver: There are many unions out there; any union that's not in the industry.

Mr Ward: No, but of the employees that are unionized today; I'm talking about today, not in the future.

Mr Oliver: The Steelworkers are in the industry; the Teamsters are in the industry.

Mr Ward: They don't behave in responsible fashion, the employees?

Mr Oliver: One of the concerns that we've heard from a lot of employers that are unionized is that the restaurant sector represents a very small percentage of their

overall total membership, that they are concerned more about the industry sectors where the majority of their members are. This is almost as an aside.

Mr Ward: So the employees that are unionized in today's environment act in a responsible fashion, right?

Mr Oliver: I've never said the employees don't; I said the unions have in some cases.

Mr Ward: Okay, but the representatives—

Mr Oliver: The representatives of the union, the union bosses in particular.

Mr Ward: In today's environment?

Mr Oliver: Yes.

Mr Ward: Which ones?

Mr Oliver: I've said the ones who don't understand the industry.

Mr Ward: You also in your brief, and I appreciate this, purposely tried to avoid the polarization which has emerged regarding this issue. There have been accusations by some presenters here that there's been fear-mongering, scare tactics etc. That's something that the restaurant association, by making a statement, doesn't think is right.

Mr Oliver: No, I don't think it's right, but I think it's right also for an association and an industry to put on the table exactly what the proposals are.

Mr Ward: I agree.

The Vice-Chair: Mr Ward, if he can finish his presentation.

Mr Ward: If I can just wrap up, the problem I have is that you're here making a statement that you're trying to avoid polarization, and yet I have two letters that were sent to restaurant owners in Brantford, April 20 and April 27, and it starts: "Is your business a ticking bomb because of Premier Bob Rae's NDP government? You may not even be aware of all his plans for your establishment which will threaten your livelihood."

That was sent by your president, and that's about the best part of that letter. That's fear-mongering, in my mind.

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Mr Oliver: The letter also goes on to list some of the—

Mr Ward: When you're here making a statement that you're trying to avoid polarization—

The Vice-Chair: Mr Ward, would you place your question?

Mr Ward: —and then your actions say otherwise, in my mind, it places a question of credibility.

Mr Oliver: The letter also goes on to list the things the government has promised and what the party policies are, and I think if you go through them, you'll find that they are ones that have appeared in party policy statements in the past.

Interjection.

Mr Oliver: Yes. That was one that was outlined in the Treasurer's discussion paper that was put out in advance of the budget.

Mr Ferguson: It was an option.

Mr Oliver: Yes.

The Vice-Chair: Order, please. It is very difficult for Hansard to transcribe five and six people talking at once. Please retain some kind of order.

Your time has expired, Mr Ward. Thank you very much for your presentation. I would like to thank the Ontario Restaurant Association for a couple of things; first of all, the quality of the documents that you've left here in terms of their comprehensiveness. There are some very interesting recommendations, and it's obvious to me, and I'm sure to other members of the committee, that you've taken quite a bit of time to look deeply into this issue. We appreciate that, and we appreciate the time that each of you has taken to come here this afternoon on behalf of the association.

TOURISM ONTARIO INC

The Vice-Chair: The next group is Tourism Ontario Inc. First of all, welcome, and if you could identify yourselves for the purposes of Hansard and then proceed with your presentation. It would be helpful if you could leave some time for questions and answers from the committee members. Proceed at your leisure.

Mr Roland Michener: My name is Roland Michener, and I am the president and chief executive officer of Tourism Ontario. Gerald Macies is chair of the Tourism Ontario labour committee. Just for your reference and edification, Tourism Ontario is a private, non-profit federation of tourism and hospitality associations whose more than 7,000 member businesses account for a sizeable portion of the commercial lodging, food service, hospitality, recreation, travel and transportation services available in the province of Ontario.

We are most grateful for the opportunity to speak directly to committee members today about the implications of Bill 40 for our battered and beleaguered industry. We implore you to listen carefully to the plight of our industry and to the consequences which we believe this bill will impose on our vital sector of the provincial economy.

To place the size and scope of our industry into perspective, we would invite you to read about the social and economic importance of the Ontario tourism and hospitality industry as outlined on pages 1 and 2 of our written submission.

We believe that it is very important for you to understand the current state of trade in our industry in the context of Bill 40. Nowhere in our provincial economy has the devastation of the current recession been more pronounced and of greater impact and duration than in the Ontario tourism and hospitality industry. Most of the more than 30,000 Ontario businesses which are wholly or largely dependent on the economic fortunes of our industry have been hard hit by a precipitous decline in business and pleasure travel, spending and patronage during the past 40 months, and the prospects for even modest recovery in our vital economic sector are marginal for at least the next 12 months or perhaps much longer.

Hundreds of tourism and hospitality businesses, both large and small, have been brought to their knees by this economic malaise, wiping out countless millions of dollars in personal and family investments and savings while

crippling the entrepreneurship which has sustained development and growth in our industry.

Whereas our industry has traditionally provided meaningful and productive employment and steady incomes for hundreds of thousands of Ontarians—particularly, I might add, for women, youth, aboriginal peoples, new Canadians and visible minorities—in greater numbers than in any other other sector or industry in our province, more than 100,000 of these people and their dependents are now suffering the hardship of permanent or indefinite layoffs and reduced available work opportunities in our industry.

Our industry desperately wants to engage, train and employ numerous Ontarians from all backgrounds and to enhance our industry's allure and appeal to our citizens and those from many foreign lands as one which offers unparalleled quality, service and value and a broad range of facilities, amenities and recreational and cultural activities to suit every business and leisure patron's preference and budget.

However, we can only do so if our competitive position is enhanced by direct, targeted, responsible and responsive public sector, social, economic and fiscal policies. We urge and encourage the Ontario government to demonstrate leadership in this regard.

Regrettably, Bill 40, on our analysis, will do nothing to enhance and strengthen our sector of the provincial economy. Rather, this bill poses an open, blatant and targeted threat to the very future of our industry through its unfair and undemocratic rebalancing of labour-management relations in favour of organized labour, and its overt encouragement of trade union incursion into the service sector in which our industry is the largest group.

The thousands of men and women who provide employment in the Ontario tourism and hospitality industry are most unhappy with the obvious collusion between the Ontario government and organized labour in the development of Bill 40 at the expense of business confidence, investment and potentially, ladies and gentlemen, thousands of jobs.

In our opinion, this one-sided piece of legislation, if enacted, will provide a clear signal to investors, entrepreneurs and the business community generally that Ontario is an unfriendly, polarized province in which to invest and conduct business.

From the time of the release of the Burkett Report, our federation has been very concerned about the implications of proposed amendments to the Ontario Labour Relations Act on business confidence, investment and employment in our industry. Yet since then, through the leaked cabinet document on OLRA reform, the Ministry of Labour's OLRA reform discussion paper and now Bill 40, the Ontario government has failed to produce a single shred of economic impact research data or empirical evidence to allay these concerns.

Rather, the Ontario government, through its political arm, has launched a full-frontal assault on the Ontario business community through its "Back off, eh?" campaign. This is hardly a recipe for responsible, harmonious relations between government, labour and management.

Business organizations have been openly and continuously chided by the Ontario government for conducting an unprecedented campaign of fearmongering and misinformation against the province's OLRA proposals. However, the government has done absolutely nothing to calm these fears, nor to impartially, objectively and factually refute them. Therefore, we would once again call upon the Ontario Government to subject Bill 40 to the following evaluation criteria prior to implementation:

—Demonstrate how the proposed OLRA reforms will be of direct, constructive, productive and lasting benefit to the Ontario business community, including the Ontario tourism and hospitality industry;

—Subject the proposed Ontario Labour Relations Act reforms to a comprehensive needs analysis and extensive economic impact studies prior to implementation;

—The government of Ontario should encourage a meaningful and balanced partnership between the business community, organized and non-organized labour representatives and provincial government ministers, both social and economic portfolios, by establishing a tripartite committee and process to review the Ontario Labour Relations Act and to recommend constructive changes to it which are acceptable to all parties;

—Provide infallible proof that the proposed OLRA reforms will encourage capital investment, the creation of new jobs and wealth and economic growth and renewal in Ontario;

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—Demonstrate how the proposed OLRA reforms will lower the cost of doing business in Ontario and enhance the efficiency, productivity and competitiveness of businesses in Ontario;

—Qualify how the proposed OLRA reforms will enhance labour-management relations and maintain existing employment levels;

—Explain how Bill 40 will result in less government bureaucracy and government-imposed regulations in the workplace;

—The Ontario government should quantify and qualify the extent to which a positive environment will be created by the proposed OLRA reforms that will stimulate a healthy and growing tax base to provide the extent of services required to enhance the quality of life for all Ontarians;

—Demonstrate how Bill 40 will result in the production and delivery of competitively priced Ontario products and services which Ontarians, other Canadians and foreigners will buy;

—Quantify how the proposed OLRA reforms will create a highly motivated, skilled, trained, productive and reliable workforce in Ontario;

—Subject Bill 40 to close scrutiny in order to ensure that it respects freedom of choice, civil liberties and democratic principles in the workplace;

—Prove that Bill 40 will enhance the ability of management and labour to respond to change and competitive pressures and that it will improve workplace harmony by increasing the ability of management and labour to resolve workplace issues themselves;

—Prove that the proposed OLRA amendments will enhance labour peace, both for unionized and non-union employees.

The Ontario tourism and hospitality industry represented by our federation respectfully submits that none of the legislative amendments contained in Bill 40 would meet all or most of these objectives, which we consider to be objective, fair and reasonable evaluation criteria. In our view, the Ontario government has fallen catastrophically short in this bill in its stated objective of increasing cooperation between labour and management to create wealth and new jobs, to promote innovation and enhance Ontario's competitive advantage and to compete successfully in an international trading environment.

Rather, we believe that Bill 40, if enacted, will convey a strong message that the Ontario government is undemocratic in its respect of freedom of choice and fundamental civil liberties and democratic principles in the workplace; that Ontario is not open for business and business investment; that there is an Ontario government and organized labour conspiracy of mistrust of entrepreneurs and business people generally; that the redistribution of wealth is more important than wealth creation in Ontario; that organized labour entitlement supersedes worker-management respect, responsibility, accountability and productivity.

Regrettably, most of the proposed OLRA reforms are nothing short, ladies and gentlemen, of an agenda for organized labour at the expense of business confidence, investment, job creation and stability, a competitive and growing economy and the opinions of the majority, I might add, of working men and women in Ontario.

We strongly recommend, therefore, that the Ontario government set aside Bill 40 in favour of stepped-up, collaborative efforts between business, labour and government to encourage consumer and investor confidence and to focus on constructive and productive ways and means of stimulating economic growth and new employment opportunities across the province.

A comprehensive review of the Ontario Labour Relations Act should be undertaken by a green-ribbon commission, perhaps more appropriately named the Premier's Council on Labour Issues, which is chaired by Premier Rae and includes human resource professionals from throughout the business community, organized and non-organized labour representatives and senior Ontario cabinet ministers from both social and economic portfolios. Commission members would be expected to dialogue in good faith and to reach unanimous consensus on any recommendations. Said recommendations should be subject to extensive economic impact studies.

In the end analysis, this consultative process would provide proof positive that collective bargaining and tripartite cooperation can and do work in Ontario.

Much though the aforementioned approach to OLRA reform is our preferred option, we have specific comments which we would like to make about Bill 40 and I would now call upon Gerald Macies to articulate them for you.

Mr Gerald Macies: Good afternoon.

Purpose clause: We respectfully submit that the addition of the proposed purpose clause to the Ontario Labour

Relations Act simply promotes the ability of unions to organize and does nothing to promote competitiveness of business operations.

We believe that the act should be focused on the process of collective bargaining and not the scope of the collective bargaining process. The fundamental premise upon which the Ontario Labour Relations Act is currently based is a sound one; namely, that the parties themselves are best able to define their specific duties and responsibilities through the freedom of choice facilitated by free collective bargaining.

The right of employers to sustain operations and enhance their long-term economic viability should be included and clearly enunciated in any purpose clause.

In regard to the right to organize as security guards, security of guests and guest property at all times is absolutely essential in the tourism and hospitality industry. Security staff are generally plainclothed in our industry and are charged with the responsibility of protecting guest property from internal theft by staff, securing guests and their chattels from intrusion, disruption and theft by non-patrons and ensuring that guests do not steal other guests' property, nor disturb or disrupt other patrons.

Security guards who are members of the same union, even a different local, could no longer be relied upon to give evidence in disciplinary hearings of fellow staff persons or to perform effective investigations of illegal or fraudulent staff activities. In the event of a strike or other type of labour dispute, said security guards could not be used, putting the security of the business, its guests and guest property in serious jeopardy.

Access to third-party property: We are solidly opposed to granting rights to any trade union organizers or employees to engage in union-organizing activities and picketing on public or third-party-owned property. Any activity which can disrupt and interfere with the normal and safe operation of a business and threaten the rights and security of consumers and other legitimate users of said property cannot and should not be sanctioned or tolerated.

With regard to certification procedures: Bill 40 prohibits workers from the right of pre- and post-application petitions, as well as revocations of union membership. This is a denial of basic and fundamental civil liberties. The right to change one's mind or to present a case against a party applying for a statutory right must be protected. In an organizing drive there should be a 72-hour cooling-off period to permit those persons who have signed union cards to change their minds. Further, the right to decertify a union should be the same as the right to certify a union in every way.

We would propose that Bill 40 include an amendment that clearly states that full, equal and open communication will be permitted between employers, unions and employees during a union-organizing drive in any business.

With regard to initiation fees, employees, when they pay a fee to a trade union in order to be counted as supporting a certification application, are alerted to the fact that they are making a personal commitment which will have long-term consequences for themselves and are not just signing a petition which they can ignore. People are more prone to read, learn and understand exactly what

they are sanctioning in a certification application and to ignore possible peer group pressure and outside coercion if they have to pay a membership fee.

Historically, and for good reason, a nominal membership fee has been recognized as a necessary safeguard to ensure that membership cards submitted represent the true wishes of employees. We would strongly recommend that a code of organizational conduct be included in Bill 40 which would regulate processes and procedures which must be followed in an organizing drive by a trade union, including the provision of standardized membership cards which clearly enunciate union dues, employee rights and empowerment and the union's involvement in the collective bargaining process.

Unfair labour practice certification: The proposed removal of the current threshold requirement of adequate membership support to obtain automatic union certification removes respect for employee freedom of choice in the certification process. It would be undemocratic to punish the majority of employees in a potential bargaining unit by taking away their right to choose because of violations of the OLRA over which they exercise no control.

Support required for certification: We believe that the only way to guarantee absolute employee empowerment and freedom of choice in the union certification process is to require that the Ontario Labour Relations Board supervise mandatory secret ballot votes in all instances where a trade union can demonstrate a certain minimum level of support. In order to become certified as bargaining agents, trade union certification votes should be required to prove that a simple majority of all employees in the proposed bargaining unit support certification.

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Structure and configuration of bargaining units: With Ontario Labour Relations Board determination of appropriate bargaining units, we do not share the view of the Ontario government that only unions contribute to enhanced productivity and competitiveness. High productivity and harmonious labour-management relations exist in a great many business in Ontario that are non-unionized enterprises.

In Bill 40, the OLRB should be required to determine whether the composition of a bargaining unit will maintain the ability of a business to remain viable, competitive and operational. Trade unions should be free to propose the structure and composition of bargaining units, and a tripartite agreement between employees, management and a trade union as to this composition should take place prior to an application for union certification or in any subsequent move to reconfigure bargaining units.

With full- and part-time bargaining units, by and large, full- and part-time employees work for different reasons. More and more, they are also competing with one another for employment opportunities. Therefore, it is to the mutual benefit of both parties and best interests of full- and part-time employees to be permitted to organize and be certified into separate and distinct bargaining units by different unions, if they so desire. No union should be granted the right to unilaterally combine full- and part-time bargaining units, as is provided for in Bill 40.

With consolidation of bargaining units, we do not believe that granting the OLRB the unilateral power to consolidate two or more existing bargaining units of the same employer, or deemed employer, whether or not the trade unions holding the bargaining rights are the same, will improve and rationalize the process of collective bargaining from the perspective of both management and labour.

We reiterate the fact that employees must be granted the unequivocal right to choose and be represented by the bargaining agent of their choice. The Ministry of Labour has historically recognized the fact that there are unique geographic, operational, competitive and economic differences inherent in the nature and scope of an employer's diverse, multi-unit operations. These realities should and must be respected by permitting the parties directly affected by collective bargaining to negotiate themselves agreements which best suit these realities.

With first-contract arbitration, under Bill 40 unions are discouraged from making a serious effort to reach a negotiated settlement with employers during the first-contract negotiations. First-contract arbitration should be used only as a specific remedy and should be carefully confined in use and application to the exceptional cases for which it was intended and defined. Open-ended access to first-contract arbitration discourages negotiated compromise by the parties to a collective agreement when they are faced with difficult choices and realities.

Therefore, we see no good reason why the existing system of first-contract arbitration should be altered or amended. Furthermore, appointed arbitration boards have no stake in the viability of any business operation.

The Employment Standards Act provides ample and just cause for protection for employees and there is no need to impose third-party, just-cause protection for said persons following certification and prior to first-contract agreement. Likewise, probationary employees should not be accorded any special rights in any such circumstances. It should be noted, however, that some collective agreements provide for probationary periods of up to two years. Is it the Ontario government's intention to limit such arrangements where they have been negotiated in good faith by the parties themselves?

With regard to collective bargaining and the use of replacement workers, the law should not prohibit employers from protecting the viability of their businesses. Employers must be permitted to hire replacement workers who are willing to work at wage rates and under employment conditions which they consider acceptable and which the employer believes are economically feasible.

Data from Quebec do not demonstrate that its anti-replacement-worker relationship has had any positive impact on limiting the number of work days lost due to strikes. In fact, the opposite has been true in almost every year since the legislation was proclaimed. Clearly, the Quebec legislation has not contributed to economic progress or labour-management harmony.

As stated earlier in our submission, businesses in the Ontario tourism and hospitality industry cannot inventory their product, nor can we move patrons to another location

in the event of a labour strife. Lost patronage is lost business for ever.

Owners, managers and staff work side by side in our industry, and often in interchangeable roles, particularly in family-owned businesses. A direct conflict of interest could be created if family members and relatives were denied the right to work together during a strike. Further, a very significant percentage of our industry is seasonal in nature and could not survive during a labour dispute without recourse to substitute workers.

The obvious intent of Bill 40 is to force businesses to accept organized labour's demands in a strike situation regardless of the effect of these demands on the viability of said businesses. This is totally unacceptable.

We would point out to the Ontario government that the provision in Bill 40 that makes it an offence for an employer to use services of employees in a strike situation to cross a picket line is a serious abrogation of the rights and freedoms of said employees. We also shudder to think of the implications that the proposed replacement worker provision will have on suppliers to our industry. Some businesses in our industry are already contracting for supplies and services outside of Ontario in order to protect themselves.

Much has been made about the strike vote requirement in Bill 40 in order for the replacement worker provisions to apply. Yet the strike vote requirement can and is fulfilled by many trade unions prior to the commencement of bargaining. In the vast majority of collective agreement negotiations in Ontario, trade unions receive an overwhelming mandate from their membership well before any real threat of a strike is evident to an employer. Therefore, the strike vote requirement is absolutely no impediment for trade unions and affords no protection whatsoever to employers.

Just-cause protection: Disciplinary issues arising out of the conduct of employees during a strike and the conditions under which employees return to work have traditionally been addressed by the parties to the collective bargaining. We fail to see any reason why this process should not be permitted to continue.

With regard to the right to return to work, given that we strongly disagree with the OLRA amendment in Bill 40 concerning replacement workers, we believe that section 73 of the OLRA should remain in place. It should be left to the negotiating parties themselves to establish a protocol for the return to work of striking employees because they are best able to comprehend all mitigating circumstances.

Contract tendering restrictions: Under the current provisions of the Ontario Labour Relations Act the OLRB has determined that true contract tendering for the performance of work on an employer's premises does not attract the application of the successor employer provisions in the act. Similarly, the Employment Standards Act imposes no obligation on a successor employer to hire the employees of the preceding contractor in a contract-tendering situation.

Bill 40 proposes amendments that would radically alter the approach historically taken by the OLRB in contract-tendering situations. Under the bill, a contract tendering or retendering will be treated as a sale of the business. As a consequence, where a collective agreement is in force, it

will not be displaced by the tendering of the contract and will be binding upon the successful bidder.

These amendments to the OLRA will all but eliminate the competitive value inherent in the tendering process and seriously devalue the collective bargaining process. Secure in the knowledge that any wage rate negotiated will bind a competitor, the parties to a collective agreement performing tendered work will have little incentive to negotiate responsibly and will be insulated from many of the normal wage pressures inherent in a free market economy.

Bill 40 also proposes narrow but extremely devastating amendments to the Employment Standards Act. These proposed amendments are a direct attack on businesses involved in the supply of building cleaning services, contracted-in food services and building security services. We believe that the net effect of these amendments will be sufficiently devastating to devalue and destroy said businesses as they currently exist.

Successor bargaining rights: If successor rights protection of bargaining rights and collective agreements under section 63 of the act are to be extended to business sales or transfers from federal to provincial jurisdiction, we believe the said protection should only be extended via a comprehensive union certification process wherein all employees in the bargaining unit, not just union members, can vote by supervised secret ballot to ascertain their union or non-union preference by majority vote.

In grievance arbitration, where existing legislation covers a subject and provides an effective enforcement mechanism, there is absolutely no need for duplicate enforcement or adjudication mechanisms. Therefore, we cannot condone the mandatory incorporation of employment-related prohibitions set out in the Human Rights Code into all or any collective agreements unless the parties thereto agree to do so.

We are very concerned with the proposal to permit arbitrators to interpret and apply other employment-related legislation regardless of whether the terms of the collective agreement are consistent with said legislation. As the Ministry of Labour openly admits, "Arbitration boards...do not have the authority to determine all questions of fact and law." Nor, we might add, are they necessarily skilled or qualified to interpret or apply legislation which is not included in a collective agreement.

We fail to see the purpose of granting an arbitrator or an arbitration board the authority to ignore specific provisions of a collective agreement in the arbitration process. Surely all the provisions in a collective agreement must be respected, acknowledged and protected in the free and democratic collective bargaining process.

Adjudication by the Ontario Labour Relations Board: The Ontario Labour Relations Board must be careful not to overstep its authority in its efforts to improve the administration and enforcement of the Ontario Labour Relations Act, while respecting the collective bargaining process.

The role of the OLRB should be as a neutral referee which interprets a simple set of evenhanded rules, ensuring that the processes of certification and collective bargaining are administered fairly. The board should not be viewed as the proactive arm of government, going beyond the

process into the content and substance of both certification and bargaining to further the interests of organized labour. Yet that is what Bill 40 envisions.

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We know that changing the neutrality of the OLRB is a primary objective of the union movement. The Ontario Federation of Labour, in its publication *It's Time*, tells its members that Bill 40 will "strengthen the Ontario Labour Relations Board to act on behalf of working people." This statement shows a fundamental flaw in what the government is trying to do.

The Ontario Labour Relations Board should not be working on behalf of anyone or anything. They should be neutral, evenhanded and fair. All members appointed to the OLRB should be qualified for the job and possess proper and balanced credentials. OLRB appointments should be subject to the scrutiny of public confirmation hearings.

Tourism Ontario proposes that several amendments be made to the Ontario Labour Relations Act which would enhance labour-management relations and protect the democratic interests of all employees in collective bargaining. These are:

—That trade unions be required to conduct a supervised secret ballot vote on the employer's last offer before a strike commences. All employees in the bargaining unit, not just union members, would be eligible to vote on this offer;

—That trade unions be required to hold a supervised secret ballot vote by all employees in a bargaining unit on the ratification of any proposed collective agreement;

—That secret ballot representation votes by all employees in a proposed bargaining unit, supervised by the Ontario Labour Relations Board, be held on every application for certification, upon documented proof of a prescribed minimum level of membership support.

In conclusion, government, industry and labour must refocus their joint efforts to stimulate investor confidence, economic growth and renewal and the creation of jobs and wealth. We must do so very quickly to ensure that our businesses and workforces are efficient, motivated, productive and competitive.

If we stand still, or become mired in non-productive and endless legislation and regulation, we will be overtaken by a global economy whose trade and commerce in goods, services and technology is much more advanced, competitive and efficient than our own. We should ask not what entitlements one group in society deserves at the expense of another, but rather concentrate on our entrepreneurial and productive strengths and our collective will to contribute to the development of a thriving economy.

The Vice-Chair: Thank you very much for your presentation. You have exhausted and indeed exceeded the time allowed for your presentation, so I'd like to take the opportunity to thank you on behalf of the committee for presenting. We will study the documents you've provided. Again, thank you for an interesting presentation.

INDEPENDENT CONTRACTORS' GROUP

The Vice-Chair: The next group is the Independent Contractors' Group. First of all, welcome and please identify yourselves for the purposes of Hansard. You have half

an hour. It's convenient if you could leave some of that time for questions and answers and 15 minutes would be great if you could see your way clear to do that. Proceed at your leisure.

Mr Harry Pelisero: We'll attempt to do that, Mr Chairman. My name is Harry Pelisero and I'm executive vice-president with the Independent Contractors' Group. With me today is Phil Besseling, who's the president of our association.

As you can see, our poster reads:

"Freedom of choice? Governments dictate joining specific organizations to work on taxpayer-funded projects! Sound fair or democratic? We think it's a question of freedom and the right to fair and equal opportunity. Could this happen in Ontario? It already has."

We're here today representing the Independent Contractors' Group. Our members represent firms that employ approximately 1,700 people who are responsible for about \$550 million worth of construction activity in Ontario. The types of employee organization in those firms cover the entire labour field. We have employees who choose to belong to international unions, we have employees who choose to belong to the Christian Labour Association of Canada and we have employees who choose to work in an open-shop environment.

The Independent Contractors' Group would like to identify an issue and a principle which we feel the committee should consider in its deliberations on Bill 40. The issue is freedom of choice and the principle is fairness. I would now like to turn over the remainder of the presentation to Mr Besseling.

Mr Phil Besseling: Besides being president of the Independent Contractors' Group, I am also president of a unionized mechanical contracting firm in the Hamilton-Niagara area and am involved in the commercial, institutional and industrial sector of the construction industry.

The issue is freedom of choice. Construction employees may freely choose whether or not to join a union. If they choose to be unionized, they also are free to choose which union. Other employees choose not to belong to any union and decide their interests are best met by working in an open-shop environment. We refer to this as freedom of choice. This freedom is severely handicapped and construction employees are discriminated against when restrictive clauses are part of the public sector bid documents.

What is a restrictive clause? Some provincial agencies, municipalities and boards of education have clauses which state that employees must belong to an international union for their firm to bid and perform construction work. These clauses are restrictive and unfair. We have attached to our brief several examples of restrictive clauses in publicly funded projects. The examples cover the entire spectrum of public agencies. We submit the following for your consideration.

Appendix A, Provincial Agency: Ministry of Housing project supplementary general conditions, June 1992, read, "The contractor shall ensure that it and all subcontractors, sub-subcontractors, and other employing persons in the performance of any part of the work are in good standing

under a contractual relationship with Toronto-Central Building and Construction Trades Council and its affiliated trade unions and employ only their trade union members in the performance of any part of the work."

Appendix B-1, Boards of Education: Board of Education for the City of Windsor general conditions, June 1990, read, "All electrical installation work so specified and described with the specifications and on the working drawings for this project will be performed only by electrical contractors who are current members of the International Brotherhood of Electrical Workers."

Appendix B-2, Boards of Education: Toronto Board of Education call for tenders, February 12 and November 21, 1991, reads, "Contractors, in order to qualify for the above work must be in contractual relationship with the Toronto-Central Building and Construction Trades Council and/or its affiliated unions."

Appendix C-1, Municipalities: Metro Toronto amendment to section 39 of general conditions reads, "The Metropolitan corporation being bound by the collective agreement between the Carpenters' Employer Bargaining Agency and the Ontario Provincial Council, Union Brotherhood of Carpenters and Joiners of America, any that is the work of the Carpenters District Council of Toronto and Vicinity under the provisions of the aforesaid collective agreement shall only be performed by an employee bound by such agreement."

Appendix C-2, Municipalities: Daily Commercial News article, March 24, 1992, in part reads, "For what appears to be the first time in Ontario, a municipality will be restricted to using only union subcontractors for its non-institutional construction work."

Appendix D, Publicly Funded Agency: Toronto Exhibition Place, general manager memorandum, September 30, 1991, reads, "It is the general policy of the board of governors of Exhibition Place that we operate as a unionized Labourers union trade show site. Please therefore ensure that our trade show leases provide that any work performed by or on behalf of the lessee coming within the jurisdiction of the Labourers union shall be performed by companies bound to a collective bargaining agreement with Labourers, Local 506."

Think of the message these provincial agencies, municipalities and boards of education that have restrictive clauses are sending to those employees who are free to choose not to belong to a union and to other taxpayers. The messages are: "We have set up an arbitrary barrier which gives a monopoly to international unions. We are prepared to take your tax dollars, but we are not prepared to allow you to work on publicly funded projects." Imagine the unions crying foul or unfair if those same public sector agencies had a clause which allowed only open-shop contractors to bid and work. They would want, and rightly so, to demand fairness. This is all we are asking for: fairness.

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The principle is fairness. Fairness in the public sector bid process is fundamental to our democracy. The type of system where governments dictate that you must belong to specific organizations to work on taxpayer-funded projects was tried, and has failed, in the former Soviet Union. The

Independent Contractors' Group believes the type of employee organization should not be an issue in bidding on and/or obtaining a job, particularly in public sector contracts where taxpayer funds are spent.

The solution? Amend the Ontario Labour Relations Act. The Independent Contractors' Group requests that the standing committee on resources development propose the necessary amendment to the Ontario Labour Relations Act to ban the use of restrictive clauses in public sector agencies. This principle of fairness is supported by other organizations. Attached to our brief are copies of letters and resolutions from the following associations: the Ontario Chamber of Commerce, the Ontario Public School Boards' Association, the Ontario Separate School Trustees' Association and the Association of Municipalities of Ontario.

In closing, we restate the issue and the principle. The issue is freedom of choice, freedom for Ontario construction workers to choose who and how they wish to be represented. The principle is fairness, fairness to all employees, union and open-shop, and to the taxpayer. We ask the committee to retain freedom of choice and support fairness in our public sector bid process. Thank you for allowing the opportunity to share our concerns. We are prepared to answer any questions at this time.

Mr Carr: I had a similar situation in my riding with a company that won the contract for the expansion of the hospital. They didn't get it because it was the same thing with the Electrical Workers. They think right now that the bureaucrats at the labour board have too much power. Is that your feeling with the legislation as it is now?

Mr Pelissero: In terms of the existing legislation, public sector agencies come into a contractual relationship in one of two ways, either on a voluntary basis or on an involuntary basis as a result of an Ontario Labour Relations Board hearing and/or decision. We think a solution would be found if the labour relations board had in fact ruled that in order to bid the only way you could bid was to be an open-shop contractor. As we said in our brief, the unions would be crying foul and unfair and would want an equal opportunity in the bid process. Not everyone involved in the construction field is allowed to bid, because they happen to belong either to the wrong union or they don't belong to any union at all. We think that type of process is wrong and that the act should be amended to reflect complete fairness and openness in public sector bidding.

Mr Carr: The company was the Naylor Group. They're concerned because their bid was about \$400,000 under the competing bid. They won it in a secret bid, but through a labour board decision, the competing bid was lowered to reflect the Naylor price but had to be done using the Electrical Workers. They're saying that's fine this time because the price got lowered so the taxpayers didn't pay any more, but in the future we may pay \$400,000 more because he'll be out of business if he doesn't get these contracts. Is that what you're saying as well?

Mr Pelissero: I think it comes back to the principle of fairness and allowing the tendering process to determine

who should be performing the work. It should be based on previous experience; it should be based, to a degree, on price, but it should be primarily based on the principle of fairness. The type of organization that your employees chose within your firm shouldn't be a factor in winning or losing any bids in the public sector.

Mr Carr: The people on the hospital board don't want to get involved, because they see it as being controversial if they come out and say anything towards any group. In fact, legal advice will tell them, "You shouldn't get involved with a labour board decision. They're final. Don't come out on either side; just stay neutral."

The problem is that I don't think a lot of people were aware of the circumstances; I wasn't until the people on the board of the hospital came to me and said, "This is crazy; do you realize what's happening?" thinking that what was happening in Oakville was one isolated incident. Of course it's not; it's happening right across. I thought I'd been fairly involved. How come this hasn't come out before, this whole issue of fairness? I'm thinking now in terms of the public. Obviously, you're actively involved. Why don't you think this has come out as a bigger issue until just now, as a result of the Bill 40 hearings?

Mr Pelissero: I think for two reasons. The recession has had an impact on the number of jobs that are available. It's been an issue, in my guesstimate, probably for the last 10 or 15 years, maybe even longer, within the construction industry in the province of Ontario. People have been satisfied to not make any waves. But coming back to the impact on Mr Besseling's business and his employees being able to perform their work, it's a question of certain rights and freedoms. We wonder how silent the unions would be had a labour relations board decision gone the other way. Would they not be approaching whatever government, whatever party was in power, and requesting the fairness of being able to bid on public sector jobs?

So we take this opportunity, while you're amending the Labour Relations Act, to do a couple of things. We hope to highlight the issue to the public so they become concerned about it from a competition point of view, and also to the committee so it would see the merits in supporting the principle of fairness in the bid process.

Mr Carr: With regard to this issue, one of the problems has been being able to take a look at it and say that basically what happened in the case with our hospital has happened across the province. It's ironic that on September 15, or whenever, the Premier is coming out to open that facility. Maybe we'll will get a chance to ask him then.

But the fact is that they're saying right now that the labour board basically said: "You're not going to get the contract. These people are." It gets very detailed, because the contractor, Ellis-Don, took it to the labour board and now it's being appealed and we've got lawyers and more. Yet we've had unions come in here and say, "We want to simplify the process." I take a look at this as one of fairness. If you have the lowest price, it doesn't matter who you have; you should get the bid.

Their big concern is that later on down the road we're going to pay a severe price in terms of building a hospital,

because the Naylor Group may be out of business. He's been pushed out for no other reason than the fact that he didn't have the right union in there. I think it is one of fairness.

Do you think you're going to see this government move on making the changes?

Mr Pelissero: Mr Mackenzie, at the conclusion of his presentation to the committee, in the press scrum at the end, said they would be willing to consider any reasonable amendments. We certainly consider this to be a reasonable amendment and hope the committee will see the merits of the issue and the principle and support the necessary amendments to the Labour Relations Act to end this discrimination. Putting partisan politics aside, it started during the Progressive Conservatives, it was carried on during the Liberals and now the NDP may have an opportunity to rectify what we think is an injustice.

Mr Carr: Just so you know, I wrote the Minister of Labour about this very specifically and sent copies. His reply was: "I can't do anything because it's before the labour board. They make the decisions and I have to keep hands off." There was no talk about what would happen, or if a policy decision would be able to change it. I wrote on behalf of my constituent, who was very upset, and the members of the board of the hospital were very upset. I got a form letter back saying: "The labour board has ruled. I can't interfere." So I don't think there'll be any changes on the horizon.

Mr Pelissero: That's why we think it's important that the act be amended, and some of the associations that support our position have suggested amendments to the construction section of the Labour Relations Act to exempt municipalities and public sector agencies from being deemed contractors for the benefit of that section. That might be one way, and if there's an additional way or another way to end that discrimination, then we'd certainly support it.

As I said, the flip side of the equation is, had the labour relations board said the only way you could bid and perform work on public sector jobs was to be non-union or open shop, how quiet do you think the unions would be in this exercise? In our membership we have firms that are AFL-CIO-affiliated, we have firms that are Christian Labour Association of Canada and we have firms that operate as an open shop. We feel it's a question of freedom of choice for the employees to determine how and who should represent them. The issue is fairness to all employees and the taxpayers.

1520

Ms Sharon Murdock (Sudbury): It's certainly a different perspective, because we haven't had this yet. In the two months of consultations I don't think I heard any proposals in regard to this.

It is interesting that Mr Carr has mentioned his hospital. I have three hospitals in my riding, one of which just got a tender that was non-union. That raised a big furore among some of the people who wrote to my office on that one, and hit the papers. It depends on the board. It's not a legislated thing. I have the sense that people who are

watching or listening to this will believe the government of the day, be it Conservative, Liberal or New Democrat, legislates that, and that's not the case. In the case of the hospital in my riding, its board of directors—the property committee, I guess—made a determination that it wasn't going to put a restriction in. So it's very dependent on the individual boards of the particular committee, agency or municipality which make those kinds of determinations.

I'm wondering, on that basis, how the Ontario Labour Relations Act, which is an act geared to those institutions that choose to work in a collective agreement arrangement, would work. Where would you see it and what section would you see it going into? I know you mentioned the construction section, but nowhere in the construction section, at least in my memory, is there anything that relates to the bidding aspect of jobs. I'm wondering how you can see it working under the Ontario Labour Relations Act.

Mr Pelissero: As you identified, I'm not prepared to let each public sector agency make a determination whether on this particular job it should be union or non-union, and do a chart at the end of the year and say, "We've let three union contracts and we've let three non-union contracts for an equal amount of dollars." We think when you're dealing with taxpayers' funds, it's a question of even being able to bid. We have members within our association who don't go through the time and expense of preparing documents to bid because they know they're simply going to be rejected, yet it's hard to establish a case of being rejected without going through the expense of preparing the tender documents.

We think it's a question of amending the act. Again, the labour relations board has been deeming school boards in some cases, municipalities in other cases, to be contractors as opposed to employers. There's a difference in terms of what that means, what your responsibilities are and if you are in a contractual relationship with a building trade council. What happens is that the labour relations board deems a board of education to be a contractor and, as such, because that board of education has a contractual relationship, either voluntary or involuntary, with the International Brotherhood of Electrical Workers or the labourers' union or the bricklayers etc, it deems that any work on an expansion or renovation basis has to be let only to those individuals who have a contractual relationship with the building trade council.

I think there would be a way to resolve the problem and the issue if the labour relations board was saying the only way you could bid was to be non-union. We wouldn't support that position either, because right now they're saying to municipalities and school boards, "The only groups you can accept bids from are those that have a contractual relationship with the local building trade council."

Ms Murdock: I know Mr Klopp wanted to ask you a question.

Mr Klopp: Maybe just a little longer on that. All these are boards, I gather. In one example a board decided to hire people who had to belong to unions. Up in her area, the board decided it didn't care one way or the other.

Really, I don't see where it comes under the OLRA. It seems the local boards of education or the boards of whatever, they deem—and they're elected people by their communities, I would imagine, at least my board of education is, or my board of municipality. I know in our township when I was on council we put out tenders. We said it had to be a half-ton truck or it had to be whatever. Some people would write and complain. Now, maybe if they would go to some arbitration board—I could see if they went to the OLRA in this case—they would argue the point that that board of education, for example, or that municipality shouldn't have done it that way, and then I can see somewhat of your point, but it really is the elected officials who decide in local areas what or what they do not do.

Mr Besseling: Not really. It's the Ontario Labour Relations Board that has deemed these municipalities or school boards as contractors.

Mr Klopp: So I guess my question then: Is the labour relations board going to phone up that hospital up there and pull it in front of the board because it didn't hire union people?

Mr Besseling: That's correct.

Mr Klopp: They're going to do that?

Mr Besseling: Yes.

Mr Pelissero: There's a potential for that to happen. That's what happened with the Board of Education for the City of Windsor, where originally it went out and hired an electrician to perform some work. It turns out that electrician was a member of the IBEW. The business agent for the IBEW moved in and said, "From here on in, any work that has to be done on a renovation or an expansion basis has to be done by IBEW electricians only." The Board of Education for the City of Windsor took it to a labour relations board hearing. They lost. It's my information that they also took it one step further and were subsequently rejected by Divisional Court in Ontario. So the process may start out innocently, and we're saying it's snowballed to this particular case where unless you happen to belong to either the right union or be unionized at all you're being prevented from bidding on jobs.

Mr Klopp: Fifteen years ago, whenever this was put in the act somewhere, if it was put in, although there is a question as to whether it was put in or not, why was it put in that—

Mr Pelissero: It's not in the act. It's an interpretation by the Ontario Labour Relations Board. The way to, I guess, end the interpretation is to amend the act to exclude municipalities from being deemed contractors under the construction section of the Labour Relations Act.

The Chair: That having been said, we've got to move on to Mr Offer.

Mr Offer: Thank you for your presentation on this very important issue. The way I understand the issue is you're saying that where a board is building a school or something of this nature and it's receiving the dollars, either from the province or through local assessment, it should attempt to get the very best people at the very best price, and the way the board has made some rulings and

because the act doesn't contain some safeguards, that just might not be the case.

Mr Besseling: That's correct.

Mr Offer: You've asked for a change to the Labour Relations Act; I forget the exact wording. I read the resolutions of AMO and of the boards and it appears that first they agree with you but second they are saying that what they want is an exemption from being certified, I think in one area as an employer and in another as a contractor. Would that do it? If I can read through their resolutions, it seems that they're saying because they were deemed an employer and/or a contractor, they then had to follow a certain path.

Mr Besseling: That's right.

Mr Offer: If they are exempt from being deemed an employer, then they don't have to follow that path and are free to do what they think is in the best interests of their particular area of responsibility.

Mr Besseling: They're free to have an open bid process, as opposed to a restrictive one which many of them have to follow now because of the ruling of the Ontario Labour Relations Board, or the interpretations of the Ontario Labour Relations Board, as it was put.

There are no safeguards, as Mr Klopp suggested earlier. There are no safeguards to prevent that from happening. That has evolved over the last 15, 10 years, whatever, into this situation, and there's no way for these public agencies to remedy the situation. They have no recourse, as the city of Windsor has attempted.

1530

Mr Offer: So which is the better route: to go by way of getting rid of the certification of employer and/or contractor, or banning the use of restrictive clauses? Will either work? Will one work better than the other?

Mr Pelissero: I think the preference from organizations' perspective would be to ban the use of restrictive clauses. That would stop or prevent any further use of restrictive clauses in public sector agencies. How you deal with the existing agreements between public sector agencies and those unions that they're bound to is another issue, and we can talk about that at another time. But again, we mention that it crosses the whole spectrum of public sector agencies: Ministry of Housing, boards of education, municipalities.

We give the example of the Canadian National Exhibition. As you're probably aware, it's contemplating literally a \$1-billion construction project to turn it into a trade show and exhibition place bar none. It's our understanding that this construction, even though up to 75% of the funding will be coming from the public, will be a closed site; in other words, unless you are unionized and unless you're internationally unionized—and I say "internationally" because, as you're probably aware, Bill 80 deals with the whole concept of allowing some of the construction international unions to break away from their international affiliations—you can't bid on the project.

The Chair: Thank you, Mr Phil Besseling, president of the Independent Contractors' Group, and Mr Harry

Pelissero, executive vice-president of the Independent Contractors' Group and former member of this Legislative Assembly for the riding of Lincoln.

Mr Pelissero: Thank you, Mr Chairman, for your patience and indulgence.

The Chair: Always patient and always indulgent of you, Mr Pelissero. Good to have you here this afternoon, and we appreciate your involvement in the process.

Mr Pelissero: Nice to have been had.

The Chair: I can't top that.

KELSEY'S RESTAURANTS LTD
CARA OPERATIONS

The Chair: The next participant had better be Kelsey's Restaurants. Please seat yourselves. Tell us your names and your titles and proceed with your submissions. We're going to go till the hour. Please try to save the second half of your time frame for questions and answers and exchanges.

Mr Mike Cataldi: We welcome the opportunity to appear before you today. My name is Mike Cataldi and I am the director of human resources for Kelsey's Restaurants Ltd. With me today is Paul Bachand, vice-president of human resources at Cara Operations. I've asked Paul to appear with me today because Cara Operations, like other major foodservice companies, shares the same concerns about Bill 40 and the impact it will have on our industry and our employees.

Because of the limited time available I will not go over the issues already discussed in the submission presented by the Ontario Restaurant Association. I would like to say, however, that we do support those views and share the concerns put forward by the Ontario Restaurant Association. Instead I will try to focus my comments specifically on how Bill 40 will impact multi-unit operations and undermine the franchising culture which is common in the foodservice industry.

As a multi-unit operator and a major employer in the hospitality industry I am very concerned about the impact some of the proposed changes will have on our establishments and our franchisees, as well as the impact Bill 40 will have on the entire economic health of Ontario. I'm particularly concerned that Bill 40 fails to recognize the unique nature of our service sector. Instead of updating the labour relations system, Bill 40 attempts only to transfer the traditional smokestack industry labour relations approach, with a few moderations, to the service sector. This simply will not work and will not make Ontario more competitive.

As you are well aware, the hospitality industry has already been very severely hurt by the current recession, and the recovery in our industry will be much slower than in most other sectors. The cost and barriers of doing business in Ontario are growing at an alarming rate. In the last two years the restaurant sector in Ontario has lost a staggering 60,000 jobs or more than 30% of the industry's entire workforce. Unfortunately Bill 40 will not create new jobs in the hospitality industry. Instead of encouraging hospitality employers to hire new employees and create

new jobs, Bill 40 will result in additional job losses. I believe that job creation and economic renewal should, at this time, be the government's main priorities.

I am particularly concerned that the proposed changes contained in Bill 40 will discourage future investment in Ontario, especially in the foodservices and hospitality sector. Proposed changes will make it more difficult for small hospitality industry operators, including franchisees, to borrow the capital required to upgrade and grow. Already, major financial institutions have cut lines of credit to restaurants as a result of minimum wage increases. Indications are that further lending constraints will be placed on the hospitality industry as a result of Bill 40.

Mr Paul Bachand: I appreciate that some of the proposed changes contained in Bill 40 are in practice in other provinces in some form or another. Other provinces, however, do not have to endure the collective impact of all these proposed changes together. The piecemeal approach of selecting different pieces of legislation from several different provinces will burden Ontario business with cost and administrative problems which would make the hospitality and tourism industry unable to compete or continue to provide employment.

Multi-unit operators within the hospitality industry are particularly concerned about the impact of consolidation mechanisms contained in Bill 40.

Under the current act, the board is given discretion to "determine the unit of employees that is appropriate for collective bargaining." Once the bargaining unit is determined and a community of common interest is established, the board cannot later amend the bargaining unit description so as to consolidate two or more bargaining units or amend the collective agreement mutually negotiated and supported by both the union and the employer.

Bill 40, however, would repeal those provisions and confer upon the board a general consolidation power. This consolidation power would permit the board to consolidate two or more bargaining units represented by the same union into one unit, including bargaining units in geographically separate locations. It is this last component that is of the utmost concern to multi-unit operators and franchise operators.

The power to consolidate bargaining units is not common in Canada. Where it does exist, federally and in Manitoba, it has been used sparingly, primarily to reduce the possibility of multiple work stoppages caused by a fractious bargaining structure. It has not been used simply to strengthen a union's bargaining power.

In the foodservices industry, restaurants run as independent, stand-alone operations. Restaurants that lose money are closed so as not to weaken the chain or threaten the jobs of other locations. Because the ranges of profitability differ dramatically between operations, even within a few-block radius, individual store contracts reflect this reality through higher and lower wage and benefit settlements. Unfortunately, this flexibility would be abandoned if consolidation and contract amendments are permitted. The end result would be that the weaker of the two operations would have to be closed because it could not afford the cost of the higher benefits.

This consolidation mechanism will also seriously undermine the ability of foodservice companies to continue to franchise restaurant establishments. Currently, franchising is a mechanism which allows independent business people to buy and operate a successful establishment and draw upon the support and expertise of a proven concept. The franchiser is also often called upon to provide a ready market when a franchisee wishes to sell his establishment.

The consolidation of bargaining units, however, represents a major threat to the way franchising operates. Often the franchiser is required to own and operate several different locations: during the startup phase; when a store is experiencing management problems; while a new franchisee is being trained, or when the franchiser has repurchased the store to help a franchisee go on to other endeavours. The critical point here is that at certain times a franchiser may own several different locations which he is holding for resale.

Under the current consolidation proposal the union could make an application to merge the bargaining units in all the stores being held for resale. This would make the sale of these to a franchisee virtually impossible, because several different owners would be required to jointly negotiate contracts. This would create tremendous labour conflict and tension, especially if merged units need to be pulled apart. Allowing consolidation of autonomous bargaining units severely undermines the operation of franchising in Ontario.

Another component of Bill 40 of concern to restaurant operators is the provisions that would permit access to premises which the public normally has access to for the purpose of both organizing and picketing. The proximity of this activity to the employer's place of business is restricted only to the extent that it may take place "at or near but outside the entrances and exits to the employee's workplace." Employers or third parties disrupted by organizing or picketing activity can obtain relief from this board upon application, but only in the event of "undue disruption."

Foodservice operators are very concerned about this proposal because it represents a major shift away from the protection of private property as well as a major economic threat to third-party restaurant employees who could be negatively impacted. The restrictions on union organizers and picketers outlined in Bill 40 are sufficiently vague as to encourage the disruption of third-party businesses, such as restaurants.

1540

This raises a number of concerns, including: Where are the entrances and exits of a foodservice establishment in a shopping mall food court? How can the government guarantee third-party employers are not detrimentally impacted when one employer in the food court is struck? What protection do third-party employers have when picketing from an adjoining employer's location disrupts their business?

If the business of a foodservice operator is impacted by picketing at an adjoining employer's location on a Friday night at dinner time or over the weekend, the viability of the foodservice operation is severely undermined. Because the cash flow of restaurants is critical and their viability so fragile, a restaurant operator could be forced to close after

only a few days of disruption as a result of third-party picketing. The potential for disruption becomes even more acute in a retail shopping mall because of the limited, confined spaces.

Currently, employers and third-party employers have the opportunity to seek immediate recourse through the courts when picketing gets out of control. This option, however, would also be taken away under Bill 40. I might add that this proposal was not explored in the discussion paper and was added to Bill 40 without public consultation. Under Bill 40, third-party employers would need to seek recourse through the labour board. Unfortunately the board is not available on Friday evenings or on weekends, which are the most critical times for restaurant operators.

This is simply a clear example of how Bill 40 fails to update the OLRA to reflect the viability of seven-day-a-week operations in the service sector.

To help address this very serious problem, I would like to propose a new mechanism, which would still allow picketing in shopping malls but not threaten the viability of third-party employers. If the union wishes to enter third-party property for the purposes of picketing, before the work stoppage begins they would apply to the board for an advance ruling, which would set the parameters as to where they can picket. This would allow for site-specific board rulings, which would reflect the individual design of the shopping mall and the location of the struck employer.

I understand that the government feels it is under pressure to move quickly and pass Bill 40, but because of the profound impact of this legislation on the long-term health of the Ontario economy and the potential direct impact on employment levels I strongly encourage you to take your time and proceed with caution.

The government, by proceeding with Bill 40, is sending a strong message to small employers and the international investment community that Ontario is anti-business. The perception and reality of this legislation will cost jobs in Ontario.

I thank you for the opportunity to appear here today, and I hope you give some of the concerns we have raised serious thought.

Mr Ferguson: Thank you very much for attending. I appreciate your brief. Not only was it brief but it was also very concise and to the point. It certainly wasn't rambling, nor was it full of rhetoric that we're growing very accustomed to hearing on occasion.

Can I ask you about Kelsey's Restaurants. Is that a wholly-owned company or is it an umbrella company, something like Pepsico?

Mr Cataldi: Wholly owned, privately.

Mr Ferguson: Kelsey's, and that's it; is that correct?

Mr Cataldi: Yes.

Mr Ferguson: Can you tell me how many restaurants you have throughout the province of Ontario?

Mr Cataldi: In Ontario, approximately 35.

Mr Ferguson: Thirty-five restaurants, and out of those 35 restaurants, the approximate number of employees?

Mr Cataldi: Probably about close to 2,000 employees.

Mr Ferguson: Two thousand employees. And out of the 35 restaurants, could you tell me how many are currently unionized?

Mr Cataldi: None.

Mr Ferguson: None. I would understand, then, that you'd probably prefer to keep it that way.

Mr Cataldi: That's correct.

Mr Ferguson: Now, in the event that one of the trade unions here in the province of Ontario decided that restaurants ought to be organized—let's take for example the service employees' union—don't you think it would be somewhat unfair if they decided to target Kelsey's Restaurants and they went through Ontario and organized all your restaurants and left everybody else alone? Don't you think there'd be a little bit of unfairness there that has a possibility of occurring?

Mr Cataldi: Yes.

Mr Ferguson: It certainly wouldn't be good. What I'm trying to get at is that some people have called for province-wide bargaining in that they felt it would be unfair to gear either one chain or one establishment and we should really look at the entire sector across the province when it comes down to bargaining. I was just wondering what your thoughts would be on that.

Mr Bachand: Basically, one bargaining unit would not address the concerns, for example, in a franchise organization which Cara operates. We are unionized in our Swiss Chalet units. I'd literally sit down and negotiate contracts based on the financial stability of each location. One-unit bargaining would not allow for that. For example, there are cases whereby we do not pay the same rates of pay in Toronto as we do in Windsor or as we do in Sudbury, based on the financial stability of the operation. For the board to rule that Swiss Chalet would be one collective agreement common to each other would ignore that possibility completely.

Mr Ferguson: Are all the Swiss Chalet restaurants throughout Ontario organized?

Mr Bachand: I would say a good 60% of Ontario is, yes.

Mr Ferguson: Out of how many? How many restaurants are there?

Mr Bachand: I believe there are approximately 180 restaurants in Ontario.

Ms Murdock: Is that going to be the same case for the Swiss Chalet-Harvey's combo that's opening up in Val Caron in the very near future? I just point that out because I found out; I rode your bicycle this weekend, the 32-seater, for cystic fibrosis. Swiss Chalet has been the sponsor throughout Canada. They were telling me that there's a new company opening up just near us.

I have a question on page 4 of your proposal, because I'm not sure exactly which proposal was not explored in the discussion paper. I don't know whether it's the aspect of picketers and where they're allowed to be, or third-party employees seeking immediate recourse. I'm not exactly certain of what you're saying in that paragraph.

Mr Bachand: Which is that?

Ms Murdock: Sorry, it's the third to last paragraph on the page.

Mr Bachand: What was not explored in the discussion paper was the fact that it would be exclusively to the labour relations board and not the courts. That is what we're saying there. In other words, right now you can go through the courts to get reprieve for third-party—

Ms Murdock: Injunctions.

Mr Bachand: Yes, and in the discussion paper it was only remised back to the labour board and it was missed in our discussion paper.

Ms Murdock: Under an expedited process.

Mr Bachand: Yes. But right now the legislation is such that it would only be to the labour board and the courts would not—

Ms Murdock: Okay.

Mr Bachand: And that's only to third-party, yes.

Ms Murdock: Just for clarification purposes, though, so that you'll know, albeit it wasn't part of the discussion paper, specifically it came up time and time again in the proposals that were made before the minister and myself during the consultation process. Some things were added from what we heard presented to us, other things were amended and other things were deleted. That was one of them. It wasn't very clear there.

I want to thank you for your presentation.

1550

Mr Offer: I have some questions over the issue of the impact on franchising and consolidation. I thank you for your presentation on that one very particular point, because although it's been alluded to earlier, I think not with the specificity you've indicated.

I'm a little concerned with the comments made by the government member, Mr Ferguson, characterizing individuals who've come before the committee with concerns about the bill as somewhat being involved in some rambling rhetoric. I certainly disagree with that to the nth degree.

However, with a franchise operation, I am looking at the changes proposed in the legislation, and it speaks to the fact that there is a single employer. It doesn't speak to that, but it certainly is that. In a franchise operation there would of course be the single franchisor and there would be the owners of each of the locations.

I'm trying to get in my mind a picture of, let's say, ABC, some product, whatever, and there may be three of those organizations in a city. The franchisor is always the same, but the actual owner, the franchisee, of course is different. It's my understanding that if the workers in each of those franchised operations were unionized, they could not be consolidated in that event, that there was one franchise operation with different franchisees as owners.

Mr Bachand: There are several examples whereby the franchisee owns several locations. For example, we have in our organization one group that franchises an awful lot of stores.

Mr Offer: That I understand.

Mr Bachand: That's where your concern would be.

Mr Offer: That's where your concern is. I'm wondering, because we have ministry officials here, if we can get an absolute clarification that the consolidation would not apply in the event that there were different franchisees but it's of one franchise operation. I hope we can get what I would think would be a very straightforward characterization of that.

The Chair: One moment. Do you want that responded to now?

Mr Offer: If that's possible, yes, but I'm afraid to get in the way.

The Chair: One moment. If one of the ministry people wants to come up to the mike and feels capable of responding to that, please do so now. Come on up to a mike so we can record what you've got to say. You'd better tell us who you are.

Mr Richard Prial: I'm Richard Prial, adviser with the Ministry of Labour. Essentially, as Mr Offer has stated, reference here is to a single employer. I could provide a tentative answer at this point and I'm prepared to provide further details in the event that the tentative answer doesn't meet your requirements.

The tentative answer is that individual franchisees, so long as they own no other franchises, would be regarded as separate employers for purposes of the act. That conclusion is subject of course to findings of the board in particular circumstances.

The Chair: Are you a lawyer?

Mr Prial: Yes.

The Chair: Is that a legal opinion?

Mr Prial: I wouldn't tender it as such. I'm an adviser with the ministry.

The Chair: Right you are. Okay, thank you. Go ahead, Mr Offer.

Mr Offer: Thank you very much for that. It actually heightens my concern, because the indication is that though there might be different franchise owners, under this legislation the board could find that notwithstanding that, there could still be consolidation of the units. I think that's going to cause some extremely heightened concern for franchise operations, whether they own one or 10 operations, based on that response.

Mr Bachand: The other concern you have is that in the restaurant business, turnover of franchisees from one to another happens quite frequently. As we said in the brief, for example, a franchisee could end up sitting at the table negotiating a collective agreement for his unit with three or four other owners, just because of turnover. There's another area there.

Mr Offer: Quickly, if the franchisor, for a number of reasons, either takes back an operation or still holds on to it and may eventually have three or four locations within a city—I'm using the geographical location in my mind—consolidation could then take place clearly, even without a board's decision. But then what happens is that the franchisor is always looking to sell the operation. Under these

changes, he or she sells the operation subject to that collective agreement for ever.

Mr Bachand: Or until negotiated again, yes.

Mrs Witmer: Thank you very much for your presentation. We've heard from a number of people today and last week who are involved in the hospitality and service sectors and I think it's becoming increasingly apparent that you certainly are in a very unique position. Unfortunately, this Bill 40 is responding perhaps to the needs of the smokestack industry, as you've indicated here, but it has not taken into consideration some of the concerns you've expressed today.

I appreciate the questions Mr Offer asked concerning the impact on franchising. I think some things have been demonstrated today that we were not aware of before.

Would you suggest that if the government proceeds with Bill 40, as it has indicated it wishes to do, and it has passed before the end of this year, it set aside the service sector and spend more time taking a look at the unique needs of that sector, as it has with the agricultural sector? Would you be recommending that type of move?

Mr Bachand: Yes, I would strongly recommend that, because there is a lot for the smokestack industry and the manufacturing industry that would not apply to our industry and could cause severe damage to our industry.

Mrs Witmer: I guess that's what we're hearing over and over again. I was interested to see you indicate here that financial institutions have already cut lines of credit to restaurants because of the minimum wage increase and you say this is going to occur as well as a result of Bill 40. What indications have you had that it's going to be much more difficult?

Mr Bachand: Just in terms of replacement workers within the industry, one of our divisions has a customer who represents, I would say, a good 70% to 75% of that business. We experienced a strike in that location about two or three years ago, and if it had not been for replacement workers, we would have lost that entire customer. That's how important it is in our industry. We could not service that customer without replacement workers if there were to be another strike. Touch wood there won't be, but that's how key it is.

In the restaurant business, we don't carry inventories in our back rooms like manufacturers carry cars and parts. If we have a one-day strike, at the end of the second day there is no more food left. There is no more business if we can't bring people in to at least service our customers. In our industry also, if a customer wants Kelsey's steak, as an example, can't get it and goes down the street for something else, the chances of her coming back for that steak are very limited. Our business is that volatile and there are many things in the act that could hurt our business. So I think it should be kept separate if they're going to go ahead with the legislation.

Mrs Witmer: I would certainly suggest that the government give very serious consideration to giving much more thorough examination to the hospitality sector, because I think we're all becoming increasingly aware of the fact that you are unique. We're hearing as well that over a

weekend, for many small business family operations, they would be forced to close down if there was a strike of any kind at all. So we thank you for sharing those concerns with us.

The Chair: On behalf of the committee, I want to thank Kelsey's Restaurants and both of you for appearing here this afternoon and making your views known as articulately as you have made them known. We trust you'll be keeping in touch as the bill progresses through the committee.

1600

MISSISSAUGA BOARD OF TRADE

The Chair: The next participant is the Mississauga Board of Trade. The people here on behalf of the Mississauga Board of Trade will please come forward, seat themselves in front of a microphone, tell us their names and positions, if any, and then tell us what they will, leaving the second half of the half-hour for questions.

Mr Sid Valo: My name is Sid Valo. I'm president of the Mississauga Board of Trade. Karen Hartley is chair of our human resources committee and has been responsible for the work we've done on the Labour Relations Act. Mr Norman White is one of our directors with responsibility for human resources.

The Mississauga Board of Trade has a membership of approximately 2,300 businessmen and business women from approximately 1,600 companies. These people represent 50,000 workers in Mississauga and our membership covers all elements of industry and commerce in Mississauga.

In response to the Ontario government's proposed amendments to the Labour Relations Act, originally published in October 1991, the board of trade has encouraged its members to write directly to the Premier of Ontario, voicing their individual concerns about the proposals. To date, over 239 business women and men have indicated their clear objection to the proposals.

As well, the board of trade filed a written submission in February 1992 to the Minister of Labour, outlining our objections to the proposed amendments both generally and with reference to specific objections to certain amendments themselves.

From a general business perspective, the proposed amendments do nothing to enhance the objectives of the collective bargaining process, facilitate the free choice of employees to organize, promote industrial stability or enhance Ontario's competitive advantage. Instead, Bill 40 tips the balance clearly in favour of unions in both the organizing and bargaining areas.

Firstly, the amendments do nothing to enhance Ontario's economic environment or promote the creation of new jobs, which should be this government's priority, given the present economic circumstances.

Secondly, increasing the economic power of unions at the expense of business clearly jeopardizes the formation of new business in Ontario. The province of Ontario must remain attractive to businesses and potential businesses in order to maintain a healthy economy and an employed workforce. Labour legislation clearly designed to favour

unions will inevitably result in a loss of business and investor confidence in Ontario.

Thirdly, the priority of any labour legislation in Ontario should stress the freedom of choice of individual employees as to how they wish to negotiate their terms of employment with employers. Bill 40 restricts the free choice of employees both at the organizing stage and during a strike situation.

From a general business perspective, the Mississauga Board of Trade urges this government to withdraw Bill 40 since the bill clearly favours unions at the expense of business, potential business and individual employees. Such legislation will only impede the growth of business and employment in Ontario, especially in the present economic condition and increased competition from other jurisdictions for business investment dollars.

Although it is the submission of the board of trade that Bill 40 be withdrawn in its entirety, certain specific amendments within the bill must be addressed to highlight their objectionable character.

Firstly, section 32 of the bill essentially provides for a ban on the use of replacement workers during a strike or lockout. A ban on replacement workers effectively makes the lockout option of an employer virtually useless and significantly enhances the effectiveness of a strike by a union.

In order to maintain effective collective bargaining and enhance industrial stability, the parties to the bargaining process must be assured that the economic power they each have is evenly balanced. A ban on replacement workers significantly increases the economic balance of power in favour of the union, since the strike becomes an exceptional bargaining weapon whereas the lockout has been rendered useless. Such a legislated imbalance of economic power can only lead to further industrial conflict, disharmonious labour relations and the eventual loss of further business in Ontario.

The Mississauga Board of Trade therefore submits that Bill 40 be amended to delete section 32 of the bill so that there is no ban on the use of replacement workers.

As well, the exceptions to the general rule of a ban on replacement workers are very restrictive. Admittedly, employers can employ management personnel or non-union employees at a location to do the work of a striking employee, but both management and non-union employees have a right to refuse to do such work without fear of reprisal.

If the ban on replacement workers is not deleted from the bill, then the board submits that the bill be amended so that management and non-union employees do not have a right to refuse to do bargaining work in a strike situation.

The use of replacement workers can also be permitted in situations where there is danger to life, health, safety or property or where serious environmental damage may occur. The interpretation as to whether any such situation existed rests with the labour relations board. This does not permit employers to act with any certainty of result.

To further illustrate how this ban could give rise to serious consequences, consider this example. The amendments provide that domestic workers such as nannies may

organize. If household parents employ domestics such as nannies to take care of children in a home and the domestics engage in a strike, then the parents are barred from using any other person to take care of the children unless the children are in need of protection as defined in the Child and Family Services Act.

Since parents normally do not have other employees in the household, family members or friends could not take care of the children during such a strike, since the ban on replacement workers includes a ban on persons whether they are hired for pay or not. This same example in the context of a small, family-owned manufacturing business which might call on family to assist, without pay, during a strike only serves to underscore the need for amendment to Bill 40.

Further, a ban on replacement workers totally prevents individual employees from exercising their freedom to cross the picket line and work during a strike situation. At a time when the economic conditions in Ontario are poor and the need for employment income is great, restrictions on an employee's choice to earn income is contrary to the general purpose of labour legislation, which should be to enhance the freedom of employees to make choices regarding their employment situations.

If the ban on replacement workers is not deleted, then it is submitted that Bill 40 be amended so that the relationship between employer and manager or non-union worker remain unaffected in the event of a strike or lockout, unpaid persons be permitted to do bargaining unit work and striking employees have the option of continuing work during a strike.

Second, section 4 and subsection 7(2) of Bill 40 provide that certain groups previously excluded from the operation of the Labour Relations Act are now included. Domestics, certain professional groups such as lawyers, architects and dentists and certain agricultural workers will now be able to organize.

The exclusion of domestics must be maintained, as the relationship between domestics and their employers is one that is uniquely personal. Such domestic employment does not call for grievance procedures, arbitration hearings, hiring halls for nannies or child care workers, picketing or, worst of all, strikes. My previous example, where the inclusion of domestics coupled with the ban on replacement workers would prohibit relatives of a child from engaging in child care work, demonstrates the difficulties created by the language of the bill.

Professional groups such as lawyers and dentists are governed by their own regulatory bodies and engage in a type of work that does not logically fit into a collective bargaining process. Non-managerial professions often begin as apprentices or associates who may be invited to become partners in their firm. The type of work engaged in by such apprentices or associates may not be drastically different than that of the partners in the firm. Therefore, it may be virtually impossible to adequately define the type of work that would constitute bargaining unit work in the circumstances. It is not difficult to contemplate situations where striking professionals such as lawyers, coupled with the ban on replacement workers, would seriously inhibit

the administration of justice. Judicial delays and postponements would inevitably be caused, affecting innocent third parties.

As you are aware, professionals such as lawyers have a professional obligation not to withdraw their services at critical times in representing their clients. The board of trade submits that groups such as domestics and professionals be excluded from the operation of the Labour Relations Act.

Third, section 12 of Bill 40 essentially provides that organizing and picketing activities of unions can be undertaken on certain premises where the public normally has access, although the property is privately owned. In this situation, organizing and picketing activities could be undertaken in places such as shopping malls. Such an amendment is objectionable, since union activity would likely detrimentally affect surrounding retail business in these malls even though such businesses have no involvement in the labour dispute in question.

As well, any strike in a shopping mall would inevitably result in increased security requirements and other costs for the landlord and tenants, again even though these parties are not involved in the dispute in question. The board of trade specifically submits that section 12 of the bill be deleted entirely.

Fourth, certain amendments in Bill 40 have provided unions with greater ability to organize workers at the expense of the employees' freedom to express their true wishes concerning representation. Section 8 of Bill 40 provides certain amendments, including a provision that the labour relations board shall not consider any membership evidence if such evidence is filed or presented after the certification application date. As a result, petitions by employees who have second thoughts concerning union representation or their choice of union representation are barred from the certification process.

The purpose of labour relations legislation is to ensure that workers freely exercise their right to choose or reject union representation. To absolutely bar any evidence that represents the true wishes of the employee is contrary to this principle. The labour relations board has very strict jurisprudence in testing whether such petitions are genuine. Where employees have a true change of heart concerning representation, such evidence should not be absolutely barred in the circumstances.

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As well, section 10 of the bill contains a provision that permits automatic certification where the employer has engaged in an unfair labour practice, regardless of whether or not there is adequate support for a particular union. At present, the Labour Relations Act provides that a union must demonstrate adequate membership support in addition to establishing an unfair labour practice. This requirement of demonstrating adequate support must be maintained. To automatically certify a union due to improper employer conduct where the vast majority of employees choose not to be represented by that union is absolutely contrary to the employee's right to choose how his employment terms are negotiated.

Therefore, the Mississauga Board of Trade submits that section 8 of Bill 40 be amended to permit the submission of any evidence that indicates the true wishes of the employees with respect to union representation and that section 10 of the bill be amended to require unions to demonstrate adequate membership support even in a situation where an employer might be considered to have violated the act.

Fifth, subsection 7(1) of Bill 40 essentially mandates that full-time employees and part-time employees be included in the same bargaining unit. Normally, the labour relations board determines the appropriateness of the bargaining unit and investigates whether or not part-time employees and full-time employees would have a similar community of interest so as to justify inclusion within the same bargaining unit. To mandate such inclusion usurps the authority of the labour relations board to conduct such investigations.

The Mississauga Board of Trade therefore submits that Bill 40 be amended so that full-time employees and part-time employees are not automatically deemed to be one bargaining unit but that the authority of the labour relations board to determine the appropriate bargaining unit be maintained.

There are many other sections in the bill which are objectionable, including the elimination of the \$1 union application fee. Such a fee should in fact be increased so that employees know that union representation is a significant change in their employment relationship.

Alternatively, unions should satisfy the labour board that signed-up members have been fully informed as to their rights upon joining a union, including anticipated union dues and their loss of a right to sue in Ontario courts for wrongful dismissal damages upon termination.

As well, Bill 40 provides for easier access to first contract arbitration, which will inevitably lead to arbitrators deciding more collective agreements. This is contrary to the overall principle that the parties should bargain towards a negotiated contract.

In conclusion, Bill 40 as a whole is objectionable in that it drastically favours unions at the expense of individual employee rights and at the expense of business in Ontario. Legislation such as Bill 40, which alters the economic balance of bargaining power in favour of unions, makes Ontario less attractive to new business. Such a result is unacceptable, given the poor economic conditions of the day.

In these submissions, the Mississauga Board of Trade has, contrary to Minister Mackenzie's view, gone beyond the headlines and specifically examined the bill for what it really is, and has concluded that the government proposals are in fact not reasonable. The ban on replacement workers unnecessarily upsets the economic balance between unions and employers in the collective bargaining process. The ban on replacement workers coupled with the inclusion of groups such as domestics and professionals leads to the prospect of totally unacceptable situations where innocent third parties are affected.

It is the hope of the Mississauga Board of Trade that everything is on the table, as Minister Mackenzie has sug-

gested, and that this government is not just going through these consultations without a sincere intention of considering these alternative suggestions.

Mr Chairman, that is our submission. Mr White and Ms Hartley are prepared to respond to your questions.

The Chair: Thank you. Mr Offer, five minutes.

Mr Offer: Thank you for your presentation. I can't go without commenting, and rightly so, about the very important contribution made by the Mississauga Board of Trade to the city, not only on this issue but on a variety of other issues, and not only today but in days past. I'd like to congratulate you on your presentation on another issue of some real importance, certainly as to how it will affect not only the business community but I think a great many people within the city of Mississauga.

My question deals with that part of your presentation on pages 7 and 8 speaking to the ability of workers to organize. I was taken by this, because we have heard presentations on this very same point, and the word that's used always is "petitions." Though you have used the word "petition" in here, I think you've really characterized it as an employee's freedom to express true wishes.

As you were going through this, I went back to the proposed changes as to what it says. In the hearings, sometimes we start to get a tad casual about our questions, and we have to remind ourselves that the bill says that the board will not consider evidence filed or presented by an employee that he or she—and I'm just paraphrasing—cancelled, revoked or resigned his or her membership or has otherwise expressed a desire not to be represented by a trade union. That's what this bill actually says.

There have been suggestions made that the way in which we can give to workers a true freedom as to whether they wish or do not wish to organize, as is their right, is through the use of a secret ballot where they are made aware of an organizing drive, what it means and are able to cast their vote for or against in an unfettered and free manner. I'm wondering if you could comment on that particular issue.

Mr Norman White: Perhaps I can respond on behalf of the board. Certainly the thrust of the board's mission on this point is that the principle of the employee's right to choose, whether (a) to organize or not, or (b) which particular union he wishes to be represented by, is the primary concern. Certainly, the board would be prepared to agree that the best way of ensuring that an employee has a free choice is by a secret ballot vote. Primarily, that would be for the reason that the employee would have full information up to the time of that vote concerning the union; and potentially the employer also, although the employer has strict requirements as to what it may discuss concerning a union drive. Both sides of the story, to a certain extent, can be told, and in that sense the employee could have full information, or at least the best information, before the employee makes a decision. So it would certainly be the position of the board that the best-case scenario would be a secret ballot vote. That way, the employee's free choice is ensured.

Mr Offer: We've heard that notwithstanding the freedom to make that choice, there are those who are opposed to that particular position, but the reason sometimes escapes logic. I apologize that this is not a fair question, but it's something that's not in the brief, and if it affects the case then I'll just go on to another area. Right now there is a preamble to the legislation, and that has been changed to a purpose clause. There are those who feel that the purpose clause now really does mandate the board and really shifts and tilts a balance. I'm wondering if you have any thoughts on the purpose clause in the legislation.

Mr White: For the most part, in reviewing the proposed purpose clause, which is section 5 of the bill, it tends to be sort of motherhood and apple-pie language. But interestingly, the first purpose of the clause is to ensure that the workers freely exercise their right to organize by facilitating the right of the employees to choose. That should be the primary purpose of the legislation.

Mrs Witmer: My first question concerns individual rights, and you've indicated here that certainly Bill 40 does infringe on the rights of individuals and also on the rights of employers. You indicated that there was a need to fully inform all employees about the consequences of joining a union, and on page 9 you indicate that they also be made aware of the fact that they lose their right to sue in Ontario courts for wrongful dismissal damages upon termination. How significant do you feel this loss is for employees in this province?

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Mr White: That's a very difficult question. To summarize the common law of wrongful dismissal in Ontario may take more than a handful of minutes. As someone who practises law, particularly in the wrongful dismissal area, generally it would be safe to say that the awards for wrongful dismissal damages are based upon what a court's interpretation of "reasonable notice" is. Certainly in a union environment, the employee is barred from bringing an action for wrongful dismissal damages in the Ontario court and seeking damages as a result. Those damages would, of course, be reasonable notice.

Mrs Witmer: Going back to a point you made regarding domestics and nannies, I'd like some clarification. Are we to interpret that if you were to organize nannies and there was a strike, then you would not be allowed to bring in a grandmother or an aunt from outside of the household to look after the children?

Mr White: That's our reading of the bill.

Mrs Witmer: I'd appreciate some clarification there.

Mr White: Perhaps I can explain. Right now, the ban on replacement workers stipulates that you cannot use any person except a non-union employee or management. If you have a situation where domestics are organized in a household and the domestics are on strike, the way the bill is written, you cannot use a person whether paid or not. So if you did have a grandparent who wanted to take care of the child, which of course is what nannies do, they would be viewed as a replacement worker and they would be

banned, whether they be a grandparent, an uncle, an aunt or a friend.

Mrs Witmer: Is this indeed what the legislation is intended to do, Mr Kormos?

The Chair: Darned if I know. I'm only the Chair, Mrs Witmer. You direct your questions to whoever you think can help you.

Mrs Witmer: Are advisers able to clarify that particular point for us?

Mr Prial: I don't think we're in a position to say at present that the legislation was intended to do anything of that nature at all. The replacement worker provision would be applicable in such situations where you've got sufficient numbers of workers who in fact can be organized.

My understanding of your typical domestic household is that you've generally got one domestic. Presumably, the only situation in which the replacement worker ban might come into effect would be in the sort of situation where you've got an employer who functions in what we'll call the domestics industry, without using any names, and that type of an employer could conceivably enter into collective bargaining relationships with the domestics whom that employer employs.

Under those circumstances it's conceivable that if the domestics went on strike, the result would be that the employer could not then employ replacement workers as such. However, with respect to the individual parent who is in a contractual relationship with the domestic service agency, that parent is not the employer as such in that scenario. Consequently, that parent could easily employ a grandparent, or indeed any other person, to come in and take care of the children.

Mrs Witmer: So you're saying that if I do have a nanny and there is a strike, then I, not being the employer, would be able to bring in my grandparent or my aunt.

Mr Prial: In that scenario, you're not the employer and as such you're not caught by the section. The situation may be otherwise if you have the luxury of employing six nannies or some such thing. I'm not prepared to say, because that would be speculative.

Mrs Witmer: Well, I don't have one.

The Chair: Mr Klopp, did you have a short question or comment?

Mr Klopp: Along those lines, we've drawn in the professional lawyers and dentists, and you use an example about how they might go on strike. Some may say that's an improvement and that we wouldn't notice any difference in some of the court cases. Seriously, though, under the amendments there is nothing—it seems to come across in here that you're putting it in the context that they have to join an organization. Where in the bill does it say they have to join an organization? I don't know where that is.

Mr White: Are you referring to professionals or to employees at large?

Mr Klopp: Anything. You have professionals in addition, employees, anything. You seem to be saying that you're going to have to join an organization now that you've been given an opportunity to. I don't read that in

the act anywhere, the old act or the proposed act. Can you tell me where it is?

Mr White: Certainly unions have to meet certain requirements in order to organize a bargaining unit. My reading of the act is that if they have support greater than 55%, then even though 44% may choose not to be represented by the union, they are forced, to use your language, to be represented by the union.

Mr Klopp: No, no. I said—I'm not a lawyer, but let's say I were. Well, I'll use another example. Somebody passes a rule—maybe it's there in the bowels of government—that says I'm allowed to jump in Lake Huron. That's where I live. That doesn't mean I have to go jump in Lake Huron; it just says I'm entitled, as a Canadian citizen, to jump in the lake. Where in the act does it say I have to join an organization just because you're allowing me to? That's all I'm asking.

Mr White: If we are addressing just the lawyer issue, if there were a bargaining unit of associates in a law firm and they were organized, yes, if you were one particular lawyer and that was organized, you aren't forced to join the union. You could quit your job. I'm not so sure that is the intent of this legislation or the intent of the Labour Relations Act. I'm not so sure I know what you're asking, Mr Klopp.

Mr Ward: Do I just have time for one quick question?

The Chair: Two quick ones or one not-so-long.

Mr Ward: One preamble, then. General consensus has been that there's a need to update the existing labour act. It hasn't been significantly changed since 1975. The workforce and the workplace have changed, I think no one can argue, in that time frame.

Just so I understand, there are some amendments we're proposing in the bill that are in every other jurisdiction or in every other province. Referring specifically to the right for security guards to join the trade union of their choice, the full- and part-time workers' rights to single-unit representation, and the petition restrictions, they are in place everywhere else in the country. Yet you're opposed to those three as well—just for my own understanding—while recognizing that we do need to update the labour act.

Mr White: In our submissions today we did not mention the issue of security guards. We were certainly opposed to security guards joining unions where they were monitoring those unions, but there is protection in this bill saying that so long as a conflict of interest does not arise, they might have that right.

Mr Ward: So you support that?

Mr White: With the requirement that the conflict of interest issue is addressed, we don't have any objections to that.

We have objections to what you have called "petitions" and what Mr Offer has called "evidence of free employee choice." We believe the principle of free employee choice is the primary principle here.

Mr Ward: So the Mississauga Board of Trade's position is that Ontario should stand alone even though those two specific areas are covered in every other provincial

jurisdiction in Canada? Ontario should stand alone; that's your recommendation to this committee.

Mr White: We have always viewed Ontario as the leader in employee rights and not necessarily one that just follows other provinces.

Mr Ward: Good. Thank you.

The Chair: Thank you, people, appearing here on behalf of the Mississauga Board of Trade. We appreciate your interest and appreciate your participation and thank you for coming this afternoon.

Mrs Witmer: Mr Chair, could I have a legal interpretation of the nanny section?

The Chair: When we get to your round in the questions and comments, you can do your best.

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KEN BRYDEN

The Chair: The next participant is Professor Bryden. Sir, please seat yourself in front of a microphone. Good afternoon. We've all got your written submissions. Please address us. Try to save at least 15 minutes for comments and exchanges.

Mr Ken Bryden: I believe that what I have to say will not take more than 15 minutes. I'm sure, however, that the logic will be so compelling that there probably will be no questions at all.

Let me say first of all that I used to be a member of this assembly quite a long time ago, in the latter years of the Frost period and the larger part of the Roberts period.

Let me say further that in those days it was a very different situation from now. I really envy you people the wonderful facilities you have. I don't begrudge them to you—I think you need them—but when I was there we didn't have an office and we had no staff support of any kind. The government had all the resources of the public service behind it. We, as a very small group—the government really dominated the House—were entirely on our own resources.

As long as Frost was in charge, oral questions were out—not permitted, period. Roberts relaxed that a little bit. We could ask just a very few oral questions—three or four in a day—provided we submitted them in writing in advance to the Speaker so that he could give them to the minister concerned so that he could get his staff to prepare a great, long-winded reply. We were not permitted any preamble. We had to read the question precisely as it was written, and no supplementary questions were permitted.

As far as getting a bill before a committee like this, well, that was completely unheard of. Indeed, in the very rare situations where we were able to get a standing committee to meet at all, the normal procedure would be for a lineup of officials to make long statements which would take up an entire session. The session would then be adjourned and the committee would never resume.

What of course changed all these rules completely was the period of minority government between 1975 and 1980. The rules were really blown wide open, and I think in a beneficial way. The opposition began to get opportunities that we certainly didn't have. We certainly had to

make our own opportunities, and that was mainly using shouting against catcalls and so on from a very large group who were not only opposite us but were all around us, too. We were surrounded by them. As a matter of fact, I notice that the House still goes in for catcalls, although the relative strength is more equalized now. Anyway, as I say, the rules were greatly improved and the opposition was given the sort of opportunity it should have in a parliamentary assembly.

The only other thing I would say is that since the rules were dictated by the opposition—after all, the two opposition parties could outvote the government, and did, on these matters of rules during that period—certain requirements of the government were overlooked. I'm not saying that the government was severely penalized—it still runs the show—but the opposition members more and more began to see the opportunities for exploiting these rules. I'm not pointing the finger at anybody; they all do it. I would have done it if I had been there. But, of course, there comes a time when a decision has to be made. I think the opposition should have a full opportunity to make its views known to the public on a government measure, but then you have to come to a decision.

With that little preamble, I'll get on to my written text, which you have before you. I am, as you can see, professor emeritus of political science at the University of Toronto, which means I've been promoted out through the top, and that was quite a few years ago. But anyway, here is my brief.

In view of the widespread misconceptions apparent in contemporary discussions of labour relations generally and Bill 40 specifically, some elementary definitions are necessary.

A trade union is a voluntary association of wage earners formed to advance their common interests, especially but not exclusively in their relations with their employer. The formal structure of a trade union is democratic, with power flowing from the bottom up.

In practice, this ideal is only partially achieved in trade unions, as in all other democratic organizations and indeed in democratic polities themselves. That, however, does not detract from the fact that, notwithstanding defects that seem inevitable in this imperfect world, unions are essentially democratic organizations of working people within a larger, essentially democratic society.

An employment unit is an autocratic structure, with power concentrated at the top and radiating down through various levels of supervision, depending on the size of the organization. In recent times there have been some steps in North America away from this dictatorial model to a more consociational one, but these cases have been few and far between. The norm in North America is still a master-servant relationship. The arbitrariness, even brutality, of the relationship manifest in the old master and servant acts is not as widespread as it once was, but there continues to be a sharp demarcation between those in whom power is concentrated and those who are subject to that power.

In contemporary democratic theory, with its emphasis on pluralism as the foundation of freedom, the first of these models is the essential ingredient of a democratic

society, while the latter is an anachronism inherited from a less democratic past. Ever since trade unions appeared on the scene, however, there has been a never-ending effort to stand this fundamental democratic truth on its head. Unions have been branded first as criminal conspiracies, then as conspiracies in restraint of trade, and now as interlopers to be tolerated at best where they cannot be resisted and even destroyed.

Propaganda from business organizations and their apologists persistently represents these democratic organizations as somehow alien to the workers who comprise them, and their elected leaders are regularly smeared with the pejorative term "union bosses." Employers, on the other hand, are represented as overflowing with benevolence and with no concern other than to protect the workers from their own organizations and leaders. There is, of course, no mention of the fact that the real concern is that employers will have to meet their employees as equals, and that could mean reallocation of the benefits of the enterprise.

The only useful information emanating from the so-called economic impact studies produced by Ernst and Young demonstrates how appallingly widespread these antediluvian attitudes are. As long as such attitudes prevail, there is no hope that confrontation will be replaced by cooperation in the workplace. And without cooperation, there is no hope that our industries will be able to compete in the modern world economy.

For four and a half years in the late 1940s I chaired the Saskatchewan Labour Relations Board, charged with implementing the province's Trade Union Act, 1944. That was pioneering legislation at the time, and the shrieks that the sky was falling were even louder than they are in Ontario today. Every time an order of the labour relations board was taken to the Saskatchewan courts the order was quashed, but every time an appeal was taken beyond the province the Saskatchewan courts were overruled and the board was upheld.

The case of John East Company v Saskatchewan Labour Relations Board is instructive. The Saskatchewan Court of Appeal held that the board had failed to hew an even line without fear or favour, letting the chips fall where they may. By contrast, the Judicial Committee of the Privy Council, Canada's final court of appeal at the time, noted that the purpose of the Trade Union Act was to facilitate the formation of trade unions so as to equalize bargaining power, and interpreted favourably the board's decision in that light.

Plus ça change, plus c'est la même chose. Once again we hear the claim that labour relations legislation must draw an even line between employer and employees. But formal equality in the treatment of parties with unequal power weights the balance in favour of the more powerful party. This is the actual situation in most workplaces in Ontario, especially in the large number where the employees are unorganized. Employers face few restrictions on their ability to hire and fire, determine conditions of work and hand out promotions and demotions. An employee who defies the will of the employer in such a situation cannot have much interest in his future as an employee.

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The present labour relations legislation in Ontario and most other jurisdictions is based on the principle that, though employees cannot be prevented outright from forming trade unions, their efforts should be restricted. Thus roadblocks are placed in their way, both in organizing and in achieving the purposes of organization.

Bill 40 is a beginning in righting the balance. It proposes that the procedures governing certification will be improved in a number of ways, and there are three improvements to which I would like to call specific attention. First, there are several changes in the operations of the labour relations board which could help to expedite decisions and prevent organizational efforts being frustrated by delay. Second, a mall or industrial park whose owner wants all the benefits of being a public place cannot suddenly be converted into a private place for the specific purpose of assisting a tenant in frustrating the right of his employees to organize or bargain. Third, counterpetitions are not to be entertained if filed after a formal application has been submitted.

Let me elaborate on this third provision. I would go further and say that counterpetitions should not be entertained even before the application is made. Almost invariably they emanate from the employer acting through one or more of the apple polishers to be found in any organizations. The employees are not so naïve that they do not know this, and also that the employer will know who has signed and who has not. Under the circumstances it takes undue courage and determination not to sign.

A fundamental principle long overdue for recognition is that it is none of the employer's business whom the employees choose to represent them, any more than it is any of my business which lawyer, if any, a person with whom I am negotiating chooses to advise him. A trade union is by and for the employees, and the employer should be prevented from interfering in their choice, either directly by propaganda or indirectly by sponsoring petitions.

The provision against strikebreakers is also an important step forward. Nothing is better calculated to create trouble than for employees on strike to see their jobs stolen by people brought in from the outside. Yet the coercive powers of the state are mobilized to prevent them from stopping this theft. How can this blatant intervention on one side against the other be interpreted as evenhanded justice? My only criticism of the present proposal on replacement workers is that it is unduly cautious. In particular, the ability to spirit struck work away to another plant has the potential for violent confrontation.

As long as so many employers in Ontario continue in their traditional mindset that organizations of their employees are, at best, tribulations to be endured and, at worst, enemies to be destroyed, we will never develop the cooperation needed for full productive efficiency. Admittedly, legislation cannot change attitudes, but as a statement of public policy it can serve to point in the direction of a new stage in the evolution of labour relations. The proposed new statement of purpose in the bill outlines the

nature of this new stage. The bill itself is a step forward in achieving it.

I have added a little note. In view of a good many of the statements I have seen both in the Legislature and elsewhere that in this situation the government is paying off its friends, the union bosses, I thought it would be useful to put before you some facts.

It is perhaps not unexpected that both opposition parties have faithfully reproduced a business position on Bill 40, since both, especially the Liberals, are substantially dependent on business contributions for their financial help. The evidence is available in the statistics on the financing of the 1990 provincial election campaign published in the 16th annual report of the Commission on Election Finances, and I'll give you the page references. I may say there's nothing unique about this. You go through the reports on financing back through the years, and the overall picture is much the same.

Totalling the contributions to all segments of the party—central party organization, candidates and constituency associations—we find that the Liberal Party received 51.5% of its money from corporations, and I give you the raw figures. The Progressive Conservative Party received 38.4% from the same source. On the other hand, 83.8% of the money contributed to the New Democratic Party came from individuals.

Just in conclusion, let me say that obviously I haven't gone through the bill with a fine-toothed comb. There are a great many provisions that I haven't commented on. I've watched these proceedings as much I could on the parliamentary channel and also the debate that preceded it, and I haven't seen anything very much new being said.

To try to avoid just threshing over old straw—you may say that's what I've done—I tried to put this in the framework of democratic theory and then draw conclusions that seem to me to follow logically from that theory.

With that, I'll turn myself over to the lions.

The Chair: I think you've been somewhat unduly humble in listing some of your background, because not only were you, of course, a member of this assembly and the chair of the Saskatchewan labour relations board; you were also Deputy Minister of Labour in Saskatchewan and had worked, prior to that, with the federal government, among other things.

Mrs Joan M. Fawcett (Northumberland): Let's not forget his good wife.

Mr Bryden: I didn't hear that. It's probably just as well.

The Chair: The first caucus to question is the Conservative caucus.

Mr Carr: I was interested in your addendum there. Did you, by any chance, take a look at what percentage of contributions came from unions to Mr Mackenzie?

Mr Bryden: I took what was the largest contribution in each case, and you can figure it out for yourself: 83.8% came from individuals; a very small amount, and certainly not more than 1% came from corporations, so the balance came from unions. It would be somewhere between 15% and 16%.

Mr Carr: I was thinking specifically of Mr Mackenzie.

Mr Bryden: No. I didn't go through all the individual accounts. I just took the totals as shown in the report. I don't know what Mr Mackenzie got. He's one of a large number of members.

Mr Carr: It would be very interesting to see what percentage the man who has driven this—

Mr Bryden: Maybe we should go through all your statements and see where your money came from.

I once had a battle about that. I challenged a member in the House to put his accounts before a committee of the House and I'd put mine. He never took up my challenge.

Mr Carr: On page 2 you are condemning the study. One of the big concerns that the public would have is saying, "Okay, if you aren't happy with the studies that are being done, why don't you do your own?" To date, the government hasn't chosen to do that. What do you think the government is afraid of?

Mr Bryden: Such a study is impossible. There's no way of setting it up. Of course, what Ernst and Young did was to interview a lot of employers and say, "What do you think of this bill?" We said, "We think it's terrible." What do you expect them to say, for heaven's sake? The government could go and ask a bunch of unions, "Now, what do you guys think of this bill?" "Oh, we think it's wonderful."

There is no scientific way of assessing economic impact in a matter of this kind. There are just too many variables to put into any sort of a model.

Mr Carr: Let me give you a quote from this morning. The Ontario Restaurant Association says it has discussed the possibility of a hospitality employment economic impact study with several consulting firms, and has been assured that a reliable economic model can be developed. They say further, "With thousands of jobs at risk, we believe that a proper evaluation should be done"—they even agreed they would pay for it; it wouldn't cost the taxpayers a cent—including the Agriculture, Tourism and Labour ministries. They said they have spoken to consultants who say it can be done, and I'll take them at their word.

We all know economic studies sometimes are difficult to do, but with it being as important as this, don't you think the government should put together a study before it makes a decision on this bill so the public will know what the job losses will be?

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Mr Bryden: I don't put much stock in somebody's secondhand statement that somebody told him something or other. I don't know of any way of making a meaningful study. If they know of a way, let them show what the way is; let them get their consultants and produce the study and let the rest of us examine it. My experience with consultants is that, by and large, they find what they are paid to find.

Mr Carr: A friend of yours from the University of Toronto, Mr Crispo, was in today.

Mr Bryden: I wouldn't wonder. Well, let's say we're not enemies.

Mr Carr: We questioned him on the issue of a secret ballot for certification. He said there's hanky-panky, and: "I know why unions don't want votes. They can't win them. They can get 50% to sign cards but they can't win the votes." There have been accusations during this process. The clearest, most definite way to do it—I was elected this way—is through the democratic secret ballot process. For certification, are you in favour of having a secret ballot so that the true wishes of the individuals will be heard?

Mr Bryden: Perhaps I could first of all suggest that you may have a clue to the answer to that question yourself, because this provision was there when your party was in power and it was there when the Liberals were in power; they never saw fit to change it. I don't see any need to change it. The problem is that the more delay there is in a fluid, even volatile, situation such as the organization of a union, where usually the employer is doing everything he can to scare the workers out of the union, the more dicey the situation becomes.

So if there is evidence of a significant majority—now, it's an arbitrary decision as to what's significant: 55%, 60%, 54%. I don't know. Legislators in their wisdom—after my day incidentally; no, I guess in my day it was there—said 55% was reasonable. I see absolutely no reason for simply delaying the determination of the matter, and I judge that the governments that preceded the present one didn't see any reason either.

Mr Carr: Let's say it could be done. Do you agree with the principle?

Mr Bryden: I thought I answered your question.

Mr Ferguson: I'm glad the member for Oakville raised the presentation by the Ontario Restaurant Association because I have before me a letter it sent out to its membership. I want to quote from it: "Planned radical changes are likely the political payoff for the huge bank-rolling that the big unions give to the NDP. In the 1990 election year, the NDP received 60% of its funding from unions."

Obviously, given the figures you have tabled with this committee this afternoon from the Commission on Election Finances, which clearly indicate that a maximum 16.2% of funds could have been raised—

Mr Bryden: It was less than that, maybe 15.2%.

Mr Ferguson: So when I said earlier today one gets very tired of some of the rhetoric, and I see lies like this by associations being presented to their membership to mislead people into believing something that is not true—

Interjections.

Mr Ferguson: They are trying to mislead people into believing something that simply is not true. The facts are here; the letter's here. Surely to goodness you're not going to suggest that the Ontario Restaurant Association is telling the truth. These are some of the things we've had to put up with and endure time and time again.

Professor Bryden, could you tell me, given your experience with Saskatchewan, given your experience as a member here, given your knowledge on the issue and perhaps referring to the Quebec situation and what has taken

place in that province, would it be your opinion that this is history repeating itself?

Mr Bryden: I tried to suggest that. As a matter of fact, I was watching the Ontario Restaurant Association's presentation on the parliamentary channel and I would say most of it was in about the same category as that item you brought there. It brought to my mind our experience in Saskatchewan. Saskatchewan was not an industrial province, indeed even less so then than now. Most of what you would call industrial units were already organized when the Trade Union Act came into effect, so most of the organization took place in the hospitality industry, in hospitals and in the government itself; the government was 20 years ahead of every other government in recognizing the rights of its employees to organize. So that's where it occurred. We heard exactly the same stories: "It'll put us out of business. We just can't survive."

Well, they all survived. As a matter of fact, I had one man, a prominent hotel owner in Regina, who broke down and cried in my office, because he simply couldn't afford one more cent; he was going to be driven out of business. About six months later, the Department of National Revenue nailed him for \$240,000 in unpaid income tax. That was in a day when the minimum wage was 35 cents an hour so \$240,000 was a hell of a lot of money.

Mr Eddy: I'm in a rather unique position, being the newest, if not the youngest, member of the Legislature. I'm sorry you added the addendum because it's rather taking the emphasis from some of the other views I'd like to discuss. I am a Liberal, by the way, a member of the Liberal caucus.

I think you're somewhat incorrect in your view that we've still got only the perspective of the businessmen of Ontario on this matter. Certainly in our caucus we've discussed what's good about the bill and what we disagree with. I must say we have some disagreements, simply because during a recent by-election campaign it was one of the things that people from all walks of life—business, agriculture and members of unions themselves—mentioned to me as being one of their concerns. A lot of it may be the fact that our economy is so bad at the present time; maybe that's a large part of the fear.

You're at the stage of life where I am; you get to talk to a great many people daily or weekly. Have you not had any concerns expressed to you by any individuals about the proposed changes? Most of the members are striving to find the correct changes to the correct degree that will make improvements, because there need to be improvements, and yet not go past a line that may cause additional problems to our economy; it's quite a thing.

Mr Bryden: In view of the persistent propaganda campaign that has gone on over the years to discredit trade unions, it doesn't surprise me that some people think of them as real ogres. As a matter of fact, the thing that surprises me is that there are not more. There was a public opinion poll where they summarized the legislation by saying, "This legislation will give more power"—not to working people, not that it will equalize bargaining power

between workers and employers—"to trade unions." So you get that kind of propaganda.

But if you just went on the basis of that, most of our progressive legislation would never be there in the early days of most of these things. Governments have to give leadership. If you took public opinion polls on most of our legislation we now take for granted, health care, for example, medical insurance, good heavens, it would have been turned down flat in Saskatchewan before. Afterwards, of course, it became very popular. So that is not the problem.

I've had people speak to me about various issues. Some people say, "Oh, we can't have anything to do with those unions." Okay, that's their opinion. As far as I am concerned, unions are absolutely essential to rational and fair labour relations. As I said in my brief, to start saying we're going to draw an absolute fair line between two people of unequal power of course favours the person with power. That's been the problem with the legislation, and this equalizes it. But when people are told in a public opinion poll, for example, that it's going to do the opposite, naturally they're going to turn against it. Very few of them are in any position to understand what the legislation actually does.

Mr Eddy: I think we all believe in the right of the individual worker to join a union. Do you believe in the right of an individual not to join a union?

Mr Bryden: Of course, but the point is that this legislation which is now being amended does not recognize the right of a worker. It allows an employer to move in with all the coercive authority he has—coercive not in the physical sense but in the sense of having the right to hire and fire—and bully the worker out of it, when a union gets organized. It allows him to stall and frustrate until the whole thing collapses. That has been the sort of situation that exists.

I don't agree with the government when it says there have been no improvements made in the last 15 years; there have been some. But they've only gone so far, and this is carrying it to the next stage. This is carrying it to what the judicial committee of the Privy Council said is to facilitate the organization of trade unions so as to equalize bargaining power.

Mr Eddy: I feel your views are quite slanted, and I try not to have slanted views, but I'm working at it.

Mr Bryden: I always used to tell my students that anybody who tells you he is unbiased is either a fool or a liar. I always used to start out by telling them where I came from, and I tell you the same thing.

The Chair: Professor Bryden, we thank you very kindly for coming here and sharing your views and insights with us. You've made a valuable contribution to the process. We trust you'll be keeping on top of this and in touch with us.

We're recessing until 6:30 this evening, at which time Helen Cooper, mayor of Kingston, will be here with the Association of Municipalities of Ontario.

The committee recessed at 1703.

EVENING SITTING

The committee resumed at 1830.

ASSOCIATION OF MUNICIPALITIES
OF ONTARIO

The Chair: It's 6:30 and we're ready to resume the public hearings into Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment. It's basically amendments to the Ontario Labour Relations Act. The first participant this evening is the Association of Municipalities of Ontario. People, please tell us your names and titles and then commence with your submissions. We want to keep at least the second half of the half-hour available for questions, dialogue and exchange. Go ahead.

Ms Helen Cooper: My name is Helen Cooper. I'm the president of the Association of Municipalities of Ontario and I'm also the mayor of the city of Kingston. With me tonight is Grant Hopcroft, controller from the city of London. Grant is a past-president of the association and also currently chairs the fiscal and labour relations committee for the association. Also with us this evening is Charlotte MacFarlane, who is a policy analyst for the organization and specializes in the field of the work of the fiscal and labour relations policy committee.

We have a brief prepared for you. I hope it's reasonably easy to read and so therefore I trust we'll take certainly less than the 15 minutes you've suggested we be allotted. I will cover the recommendations and then certainly would be more than happy to take any questions or comments, although in certain instances I'll defer to my colleagues who have more immediate expertise in the area than do I.

I also have to apologize. I've got absolutely whopping hay fever. This happens to me every now and then, and I have to watch.

First of all, we have been concerned since the very beginning, in terms of the writing of the original bill and now the proposed legislation, with the issue of location. Municipalities are perhaps not unique, but they do share the fact that most municipal work sites are scattered throughout the entire municipality. A public work site, for instance, will be in a vastly different location from city hall itself, and that's just one example. Another is municipal recreational facilities. Of course, the purpose for these is that they serve the community and therefore will be in very disparate locations in that community.

Therefore, when the legislation refers to location we seek clarification. It's certainly our position that the municipality should be deemed to be one location. In the interest of fairness, should the municipality be in the unfortunate position of having to face a labour dispute, I think it should be able to function as if it were one location.

The second recommendation has to do with the request for exemption for municipal services required by statute. Again, because of the nature of municipalities and the work they perform in the public interest, there are many jobs which must be done, and failure to perform these

tasks could result in danger to the very populations we are attempting to serve. We can cite issues such as building inspection. Again, London recently is an excellent example of very serious legal implications, as well as implications to human health, were these functions not to be performed.

Third, we're very concerned about issues around deadlines for such things as grant programs and transfer payment programs. Most of the deadlines of course are in relation to cost-sharing programs with the provincial government. If we are in a position that we're not able to meet those deadlines, then we're not able to serve the public interest. Therefore, we request that the act exclude those services which are required by statute.

We have some philosophical problems with the bill as well in terms of the issue of balance of power. We suggest, in terms of the issue of certification and decertification, that the proposed legislation does weigh in favour of certification as opposed to decertification and suggest that the balance should be more evenly applied.

Recommendation 4: We are concerned about first-bargain settlements. Of course, the larger municipalities across Ontario are all largely unionized and have been for many years, and in terms of many aspects of the bill there is little to concern us, as we are already well established in relations with well-established unions. However, there are smaller municipalities across the province. Although their populations may not be very large, their numbers are large. They are currently not unionized. The situation may arise wherein they are, and therefore we do have concerns about the board's ability to determine non-monetary issues in the instance of first contracts and would suggest that that ability be far better defined and also be limited. There isn't significant recognition of the right to negotiate.

Recommendation 5 has to do with successor rights. There are a number of instances in which we contract out services for quite legitimate and valid reasons. Most of those are in the area of waste management, although there may be other examples as well depending especially on the size of the municipality. The best examples I could think of at the moment have to do with garbage collection and blue box systems, which have been largely private-sector-contracted in the last three to four years. Certainly this government and the previous government have more than encouraged the expansion of that program.

We have a great deal of concern particularly in the area of waste management where—I'm trying to think of how to say this diplomatically and I'm probably not going to succeed—there is very limited participation in that market to begin with. One could perhaps use the words "emergence of cartels." We would suggest that the government, in applying this requirement in the legislation, may well be very much playing into the hands of very large corporations in a very selective area of the economy. I doubt that was the intent in the writing of the legislation.

We therefore suggest, for reasons of sensitivity or privacy in terms of the tendering process—and of course we have an extremely public tendering process at the municipal

level, probably the most public process anywhere—a requirement for businesses not only to bid competitively but to be seen to be bidding competitively. The requirements under the Employment Standards Act currently may be largely defeating those efforts and may be encouraging some extremely unfortunate business practices as a result.

Our final recommendation is recommendation 6. We suggest the wording of the bill is still less than clear. I had talked about the issue of location at the beginning. In relation to that I'll give you an example. The word "premises" is used at various points in the proposed legislation. What are premises? That's particularly relevant for the municipal sector where we could probably successfully argue that "premises" is the municipality. I would suggest that the current legislation is indeed flawed in the fact that this use of language is not sufficiently clear. That's one example.

Those are our recommendations, which I think are all very specifically applying to the municipal public sector as an employer and relate to what we see as major problems with what is currently proposed, looking at us as employers as opposed to any of the other political interests we might have as municipal politicians.

The Chair: Thank you for a brief that sets out the recommendations and arguments clearly, succinctly and directly without a lot of bombastic stuff.

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Mr Klopp: Thank you very much for your brief this evening. We met a little bit earlier. As a past member of Hay township council in good old Huron county and a member of AMO, I was privileged to attend a number of annual meetings. I indeed see some faces here this evening.

Your remarks, I think, are well documented and need to be taken very seriously. I know we're going to. On recommendation 2, exemptions, it's my understanding that under section 32 of the bill, sections 73.1 and 73.2 of the act, if there was a vote—and heaven forbid if there's a place where there's a union in one of our municipalities—there's a provision here to look at things such as essential services. My interpretation would be that this is the area we'll be looking at with groups like yourself to clarify, to walk through and work together. Are you familiar with that section at all?

Ms Cooper: I'll defer to Mr Hopcroft. We're very fortunate that Mr Hopcroft's other virtue is that he is a practising solicitor. It helps when you read legislation.

Mr Grant Hopcroft: Once in a while.

Ms Cooper: Once in a while. Also, you did give me one opener, and that is that the AMO annual convention is starting two weekends from now.

Mr Klopp: I'll be there.

Ms Cooper: I know you've gone in the past. Everybody here is certainly more than welcome to attend on that occasion as well.

Mr Hopcroft: If I can respond with respect to the permitted use of specified replacement workers as it's defined in the legislation, it doesn't, in our view, specifically cover the situations where we are bound by statute to deliver a service. It's a far different situation from one where

you're dealing with private business. While certainly they appreciate and would like to keep market share, it's not an issue of market share with municipalities; it's a statutory duty to provide that service. In our view, I think if that section were amended to include reference, in the municipal sector in particular and the broader government sector, to provision for services that are required to be provided by statute—

Mr Klopp: As a lawyer, you think that this needs to be just a little more clarified, that you can then work with the ideas of environmental emergencies and essential services but that you need to hear the word "statute" in there versus just the way it's written.

Mr Hopcroft: Yes, we would very much like to have some certainty on that point. Obviously, no one likes to be in a strike or lockout situation, but when they do occur the last thing you need to be worrying about is whether the particular exemptions apply in your particular instance.

Mr Klopp: I think that's fair. Our county has a union with a lot of the guys I work and play hockey and ball with. They don't need to have bad feelings if the road isn't getting plowed. I'm sure they want to have it cleared up themselves. "Do I have to work if there is an unfortunate situation?" I can appreciate that. That was my only question.

Mr Hugel: Thank you for your presentation. I would like to get you to elaborate a little bit more on the workplace and the lack of definition as it currently is. If you could give some explanations of how that is at least perceived to cause you some problems, I'd like to hear more about that. You raised a couple of examples here, but I'm sure there are others. I'm thinking about transit, for example, where you may have a clerical staff in one building, a garage in another and buses in between. I'd like you to elaborate on that and provide a little bit more of your counsel, because I think it's more important.

Ms Cooper: I can speak, but I'll certainly let Mr Hopcroft give a more detailed explanation. In many instances—my own city is included; it's one of many—we've outgrown our current municipal premises, especially at the moment. We don't have the money to build new buildings, so we are renting in the private sector. That poses an interesting question: Does city hall then become two locations? That's one example. We seek clarification. We would of course argue, I think very strongly, that it should still be considered to be one location.

I can speak from personal experience in having dealt with the strong possibility of a strike in my own community last summer. There had been a strike vote taken and we were at the mediation stage. Fortunately it was resolved. It was certainly an interesting introduction for me to the whole negotiation process. We had to do a certain amount of planning. No matter how little we wanted the strike to occur, we had to plan for the inevitable. The municipality issues welfare cheques, operates sewage treatment plants, maintains roads. In our case we have lots of potholes—some may be described as minor craters—and therefore we do require certain maintenance services or we could have very serious accidents or legal problems. Therefore we

were trying to determine how we would allocate our non-union staff to be able to cope with those things.

For instance, if the social service department is now in an external location, is it legitimate to have a senior planner acting as backup staff for the issuance of welfare cheques? That's the kind of thing we had planned. We certainly had not planned to bring in an outside workforce, which I trust you'd be entirely sympathetic to. We were going to manage with what we could legally manage, but we would not have been able to cope had those municipal locations been called different locations.

The Chair: Thank you. We've got to move on to Mr Eddy.

Mr Eddy: Mentioning further about the city of Kingston, it also has as a service the distribution of natural gas for heating etc in the city. That's the question I wanted to follow up on, the matter of municipal services required by statute and, on the other hand, essential services. I don't think they're one and the same.

Mr Hopcroft: Not necessarily.

Mr Eddy: They're quite different. The importance, I think, is that we need to have detail on what essential services are and how they can be carried out in the case of a strike. What essential services are does of course vary in people's opinions. Traffic signals might be considered very essential by some people, and perhaps are, but I think there has to be a great deal of detailed description of what essential services are—water supply, sewage etc. They're not one and the same. You haven't really zeroed in on essential services. How do you see that?

Mr Hopcroft: You're quite right. The issue of "essential" is quite apart from what we may be required to do by statute, because in many cases some of the statutory responsibilities might not be seen as essential in the eyes of the public. Certainly from the point of view of an elected council, which has a statutory duty to ensure that those things are done, it's a much different matter.

But dealing with the "essential" issue, clearly I think to come up with an all-encompassing definition would be extremely difficult. I think that to the extent that the legislation can, by example, point out a range of services and a type of function in terms of the provisions of those services, it would certainly be helpful to us and to our unions in terms of arriving at something that's satisfactory if we are in a strike or lockout situation.

Mr Eddy: I think that needs to be set out long before the bill becomes law.

Mr Offer: Thank you for your presentation. It's nice to see you again. I want to deal with your recommendation 2 with respect to municipal services required by statute. This may come as a bit of a surprise, but I think when the Ontario Association of Children's Aid Societies came forward and expressed its concerns with the section, I think a lot of the things it was saying were much what you are saying. They too are responsible by statute to provide certain services. They basically came with very much the same concern that you have, so I'm very appreciative that you've come with this particular matter. I think this is an extremely important issue.

I'm always thinking of city hall and all the people who work there. I would imagine that if they were unionized there would probably be just one union with different groups within that particular locale. Is that basically how the structure would work?

1850

Mr Hopcroft: Not always. In fact, in a number of municipalities you will have different bargaining units for different factors. Using my own municipality, the city of London, as an example, we have a service workers' union for our home for the aged. We have one local for our inside workers, one for our outside workers. At some time after January 1—

Mr Ferguson: CUPE?

Mr Hopcroft: Yes, both Local 107 and Local 101 of CUPE. Assuming some legislation gets passed this fall, we'll have one and possibly two additional locals in terms of water and parks workers as well. So there can be a very complex labour relations situation with a myriad of different bargaining units.

Mr Offer: So there will be within the municipality employees who may be involved in the provision of service in a home care facility of some kind. Certainly there are individuals in each municipality who deal with a social service—in fact, writing of cheques; I can't think of any other way to put it. People come in, they are in need, assessments take place and as a result under the social service area there may be some assistance given in the form of a cheque. Would this bill affect those individuals if there was a service disruption?

Ms Cooper: In my opinion, yes. First of all, at the expense of repeating myself endlessly, it is very dependent on the definition of "location" whether service would be totally disrupted or just diminished. It would certainly be diminished.

If you take that example, which is a particularly good one to take, probably servicing of existing clients could function reasonably well, although there would undoubtedly be delays. The problem would lie in the assessment of potential new recipients. I think we would all concur that the people who perform that function are extremely skilled and perform an extremely important function, particularly to the people who require that service. There's no doubt that would be disrupted.

Mrs Witmer: Thank you very much for your presentation, and I appreciate your recommendations here. I'd like to take a look at recommendation 3, where you speak about the need to maintain the balance of power and to improve relations between labour and management. Certainly that is an area that everyone in this room would agree is absolutely critical.

Then in the second paragraph you indicate that although the government professes fairness as one of the aims, there are certain provisions in the bill which indicate a definite preference for the interests of labour, and you go on to talk about the requirements of certification. Then you say that if you are going to demonstrate fairness, obviously the decertification process should be made equally accessible. I wonder if you would expand on that recommendation for

me. What do you see to be the ideal as far as certification and decertification? What would improve the relationship?

Mr Hopcroft: I think the ideal would be a process where it's essentially the same process for certification or decertification. The proposed legislation has a 40% threshold for a representation vote, and in our view it would be fair to have the same standard if employees wished to decertify. Otherwise, it does quite clearly tip the balance and can cause, I think, some consternation among employees in certain instances whether a particular local or a particular union is representing what they see as their best interests at the time.

Mrs Witmer: In the certification process, there have been amendments suggested that would include the responsibility for unions and employers to fully inform all employees as to what is involved in unionizing and what are their obligations as union members, what are the implications of strikes etc, and then the opportunity for them to freely choose by secret ballot vote. Were you indicating that this should happen here for certification and decertification as well?

Mr Hopcroft: To put it in its simplest sense, there should be the same opportunity for process, whether it's to certify or decertify, so that there's a balance and not a tipping of the scales one way or the other.

Mr Carr: Thank you very much for your presentation. I had the pleasure of sitting through a couple of yours, Helen, and I appreciate it. I'm sorry to hear you'll be moving on after August, but I'm sure you'll be around on many occasions.

Specifically, this government has said that one of the reasons for the introduction of Bill 40 is to improve labour-management relations. I wondered, Helen, if you could speak from your own perspective, and then maybe Grant could look at some of the relations. How would you characterize your relationship now with your employees?

Ms Cooper: It's a difficult question to answer. I'm here as the president of AMO; as such, it would be extremely difficult for me to speak for all municipalities in terms of their relations with their employees. I could, however, comment that with relatively recent—may I call them crises?—financial crises that municipalities have been forced to face since the late 1980s, I think we are becoming rapidly more skilled in terms of our interest in labour relations issues and our ability to deal with them. I think AMO, if I may use this opportunity for a bit of a commercial, has adopted very progressive and constructive responses to initiatives such as pay equity, and now employment equity. I think that helps to reflect the fact that we have an extremely important concern for labour relations.

I am currently participating, as is Grant, in a broader public sector workforce study group with several public sector union representatives in the province, and we are defining our own terms of reference, to a certain extent. But one of the things we want to do is look at labour relations success stories in the municipal sector and find out which municipalities seem to be doing well and why. There's such a diversity of municipalities in terms of size, location, geography and all the rest of it that I'm sure there's no one right answer, but I would suggest that this is

an area where municipal governments are gaining rapidly increasing sophistication.

The Chair: I want to say thank you to you, appearing on behalf of the Association of Municipalities of Ontario. Your association has a history of valid input into legislative endeavours, and that tradition has obviously been maintained and sustained once more today. Thank you for taking the time to be here, to you individually for your presence, and to your association for the interest it's shown in this legislation.

Ms Cooper, we're going to be in Kingston on August 26 and 27. We're looking forward to that. Perhaps we'll be seeing you again when we're in Kingston.

Ms Cooper: At that point, I will be recovering from the AMO convention.

The Chair: As a person who was in municipal politics as well, that has many, many meanings. Thank you, Ms Cooper. Take care. Have a good trip home.

Ms Cooper: Thank you very much.

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HEPWORTH AND ASSOCIATES

The Chair: The next participant is Hepworth and Associates. Present on behalf of Hepworth and Associates is Gael Hepworth, and I understand that at least one of her associates, Gavin, is with us this evening as an observer, so we appreciate his interest.

Ms Gael Hepworth: I thank you all very much for the opportunity to meet with you this evening. I do wish to impart to you that the notice for this appointment was very short. I am a parent. Obviously, I have a four-year-old son. After coming home from work tonight I managed to scramble and get 25 copies of my presentation available, pick my son up from day care, locate my friend who agreed to come this evening just in case someone decided to have a hard time during my presentation, and rushed down here to make this presentation to you this evening.

One of the things about this type of public hearing is, how accessible is it to women and how accessible is it to those of us who have child care commitments? I asked if there was child care and I was told, of course, that there is none available. I find that to be a problem, and I want you to know that.

I will proceed with my discussion at this point.

My name is Gael Hepworth. For the past 12 years I've worked in the retail sector of our economy. I understand that later this evening you will be hearing from Dylex, which is one of the major employers in the retail sector. One of the things that prompted me to write this brief and come to you and discuss the concerns of retail sector employees was the type of thing that was coming from various retail organizations including organizations like Dylex. I felt I had some things that should be clarified, I had a position that should be stated, and that's why I took the time this evening to come and share those concerns with you.

As a manager of planning and systems development, I was responsible for the formation of a corporate business plan, the evaluation of results related to the business environment.

I have come before you today to redress the balance of submissions you will be hearing on behalf of retail workers made by retail employers. I have come to tell you that they don't speak for me. In fact, I don't believe they speak for more than 200 of my former coworkers who lost their jobs, with no notice, no money and no explanation, two weeks before Christmas last year. In fact, their final pay, severance and everything else is tied up in a long and protracted bankruptcy proceeding. They will never see any of that money.

You will be hearing from the Retail Council of Canada, I'm sure, major employers in the retail sector, the landlords of regional shopping malls, that these reforms will result in serious hardship in the retail sector in Ontario. There is no doubt that the retail climate in Ontario has been significantly depressed since the introduction of the GST. The overexpansion of retail developments, high value of the Canadian dollar, propaganda by the federal government on free trade, reduced consumer confidence and high cost of housing have created immense pressures on retail profit margins.

I have come forward to make this statement on behalf of the 12% of workers who are employed by retailers in Ontario. What the Retail Council of Canada and other retail organizations will decline to tell you is that the major casualties of this economic environment are retail workers. The majority of retail workers are not unionized and have only the basic minimum level of job security and protection extended to them under the Employment Standards Act.

The majority of those workers are loyal and committed to the companies that employ them. In return, the retail employers choose to intimidate their workforce. Employers in the retail sector do little to upgrade employee job skills, regularly replace full-time workers with part-time and seasonal staff and intimidate staff members to work extended hours during peak business periods. The potential impact of the proposed changes has not been lost on the members of the Retail Council of Canada.

The retail business groups are committed to denying retail employees the right to organize and negotiate the terms of their employment within a collective agreement. They are committed to the preservation of management rights. It is one of the few principles on which they, as a group of employers, can agree. Any attempt to facilitate the process of forming a union is a clear violation of their interests, yet they come before you on behalf of employees in the retail sector.

In your position, I would be most insulted to think you would believe that the retail council and major employers are really interested in the rights of retail employees. They would have you believe that the same employees selected by them to deliver corporate profits can become subversive when empowered with a union to represent their rights as workers.

Employees have no rights in the retail environment. They are simply considered to be a variable overhead expense. They are a necessary evil required to conduct business activity. Evidence of this attitude of distrust can be found in the loss-prevention policies of most retailers. Employees are expected to steal and significant resources are committed to stop them from doing this kind of practice.

The rights of retail workers: We will talk about how we have the right to seasonal employment. In the retail sector we get the ability to sort of drop in and drop out of the workforce.

The reality of that is that a lot of retail workers work for more than one employer in an attempt to try to get access to a decent living wage. Regularly, full-time workers are replaced by part-time workers. There is an entire process of doing that kind of thing. It destabilizes the workforce. There is a lack of employee upgrading and training. There are a lot of intimidation practices put in place to make sure that it's an unstable, insecure environment and that people don't achieve real excellence in their job. They don't become fundamentally essential to the business.

Unions are about the only way we as workers have the ability to come together and say that we have some rights to job security, employment security, training, pensions, benefits; those types of things.

Each and every day in Ontario, people organize and negotiate for themselves. I regularly organize and negotiate for my child's child care. I organize and negotiate for housekeeping with my partner in our residence. That is what normal people do. This is not some kind of activity that somehow is subversive; this is a fact of life. When we give professional organizations legislation that guarantees them limits on the number of practitioners in their field, such as lawyers, are we doing any less for the rest of us who are not so endowed?

The need to organize in the retail sector is clear to all who work there. We need the protection extended to us in the proposed changes. Low-wage employees in the retail sector are well aware that organized workers earn more money with better working conditions.

But we are afraid that by choosing to organize we will be subjected to losing our jobs, having scabs take our places, with refusal of the company to negotiate any agreement, ending up earning less with fewer benefits as a result. These employers excel in the use of intimidation and exploitation of employees. They are not interested in participatory management.

Retail workers require the right to organize by sector in order to reduce intimidation by the employer. If employees were able to organize in the same manner as construction workers, the opportunities and benefits of organization could be extended to all. Due to the marginal nature of employment commitments in this sector, it is possible for people to work in the trade for years and never gain any level of seniority or security.

Workers could choose to have their own training centre supported with employer contributions to maintain job skills and plan for career opportunities. Employment equity could be monitored to reduce the systemic and overt violation of human rights legislation now present in many locations. The workforce must have some measure of job security to reduce intimidation.

Staff must be able to communicate with each other. That's one of the reasons we think the list has to be available. We have to have access to the list of who in fact works in the locations. You're working in a lot of different locations. You don't necessarily know all the staff who are

working in all of the different areas. It's very difficult to organize in that kind of situation.

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In terms of economic competitiveness arguments, I find these truly insulting. In the retail sector, customer satisfaction and service are essential elements of a viable business, but retailers in Ontario have failed to remain competitive. For example, how many times have you shopped in a store where the staff membership was stable, knew the products well and were friendly, informative and effective in product presentation, care and maintenance? Because staff are not trained and treated as a valued part of the retail business, we have lost the value added component of retail service, and then self-service, deep discount shopping becomes a viable alternative. Pay less for the same service. Why not?

Retail wages would likely increase due to unionization of the retail sector. In exchange for marginally higher costs, retailers would have to provide stable, knowledgeable staff primarily concerned with customer service.

In terms of getting up and leaving town, I've got news for you. The retail industry means you must be here and you must serve that public. You don't have the ability to get up and leave the country. If you do, you're no longer in retail. Yet time and time again I see that kind of thing about: "Oh, you guys can't do this. We'll just close up shop and leave town." Someone is going to be here, and they're going to be involved in the business called retail and it's going to take place in your corner store and they're going to be selling one on one to you.

In terms of the economic indicators, there are a few things the retail sector could do if it pulled together in order to improve its environment. Business activity is most viable in clusters of stores that serve different market needs or where like-product stores congregate to provide a targeted shopping area. That's one thing they could constructively do. This type of marketing strategy is most consistently executed in regional shopping centres where landlords can set terms and conditions for the tenancy.

Retail owners perceive all other business activity as a threat to their own interests and will only work collectively as a last resort, even though as a consumer you want to go somewhere where you can get all your needs met in one place and you want to be able to access all these things. People could pull together to give you that kind of retail shopping experience.

The decline of retail profitability has been increased by the failure of retail owners to cooperate in terms of their own interests. From 1985 to 1990, the regional shopping owners drove up the rents in major malls, primarily Yorkdale and the Eaton Centre, to such a level that it was very difficult to make any profit. They cut deals with people in lease agreements where they said, "We'll give you a store in Yorkdale, which is an A-1 shopping location, but you then have to take stores in the other 14 locations where we have mall space available, and those are not profitable."

At a certain point the bubble burst and the retailer for which I worked at the time went bankrupt as a result of those kinds of agreements. The workers had nothing to do

with that and somebody else walked home with all the money.

There were also other things, the Canadian dollar rising, our shopping against the US, although the quantities in the US are somewhat different and I don't know whether or not you're actually seeing comparative results. Now that there's some kind of Canadian-US shopping thing going on, talking about what's comparative, you might be seeing some of that information here.

I think the only real initiative that helped retail shopping here in Ontario was the commitment by the NDP government to try and provide some more income support for those people who were at the bottom of the barrel. By increasing some of the welfare payments and the family allowance benefits, there was more money going into that sector, and believe me, those people don't have any choice. Whatever they get, they spend. It's a matter of survival. Getting more money into better-off sectors of the economy does not necessarily increase retail spending. It increases some of the investment spending.

Those are initiatives I think we could be looking at here. I think this is an industry that's going to be here. It's a viable part of this economy and it needs to be here going forward. There will always be people here consuming retail service, but workers deserve to be treated with respect. They deserve to be treated as an integral part of that business management process, and only by legislation like Bill 40—believe me, there are some things I would like to see strengthened in that as well, particularly in terms of the collective bargaining and the sectoral bargaining provisions. That's where we're going to get growth here. We're not going to get growth by handing over to people the right to intimidate workers and marginalize the workforce and take away the right to full real employment wages.

Has anybody got any questions?

Mr Offer: Spoke you for your presentation. There are many areas you spoke to that I have absolutely no disagreement with whatsoever, speaking about the need for increased cooperation, the need for respect. I can't imagine anyone having any disagreement with that.

You say that the retail workers require the right to organize by sector. I know that what you mean is just taking an area and all retail workers being able to be organized, outside of whomever their employer might be. Obviously, that's not in the bill. Apart from that, my question is, what are the provisions in the bill you believe will be of assistance to the retail workers?

Ms Hepworth: The right to know who works there. I don't know how you organize a place without knowing who works there. I worked in a company for seven years. I was the senior member of the management committee. I travelled from store to store. I was never going to know all the employees who were working out of any one of those locations. It was my job to know the management members in that store, and they turned over quite frequently. We had 80 stores across Canada and at any one point in time I may have known upwards of 350 store workers, but that wasn't anywhere near the number of actual workers who were involved in any of those locations.

Mr Offer: When you say the need to know, I noted in your presentation you spoke about the need for lists. Is this where that comes from, that the lists would provide—

Ms Hepworth: I think the lists are absolutely essential. I find it really interesting to hear about how difficult it is to produce lists. It's not difficult to produce lists. If we produce payroll, we can produce lists. We produce lists of shareholders and we know where the shareholders are and we know how much they've got, so I don't understand how it's so difficult to find out where the employees are.

I've heard the argument that as a woman I should feel absolutely threatened by the fact that my name would be on a list somewhere and somebody, God knows who, might have access to my name. I'll tell you, I feel absolutely threatened by the inability to get together with my coworkers and talk about improving an employment situation which is such a fundamental portion of my working life. I only have so many hours in a week and a very large portion of them go into my work.

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Mr Offer: So on this point you would be asking for an amendment to the bill that lists must be provided, because that's not allowed in the bill right now.

Ms Hepworth: I'm saying that for me to organize, I need to know who's there so I can come up with the numbers to say, "I now have met the conditions to be certified." That's what I need. The reason I talk about sectoral bargaining is that I find it really problematic that the predominantly male construction industry has absolutely no difficulty organizing through all sorts of small and independent contractors, holding their pensions and their training and their job security and everything else vested within their union, yet somehow the predominantly female retail clerk sector is not entitled to the same kind of security.

Retail clerks, as a group of people working together, can make sure we know about these machines that are going in. We could make sure that by organizing our company, the next-door company is not considered to be uncompetitive for some reason; that they couldn't divide and conquer us. If Yorkdale became a unionized place, that would be it; it would be a non-issue. The whole place would be organized, thank you very much. That's the way it is, so that's it.

Mrs Witmer: Thank you very much for your presentation, Ms Hepworth. I'm not quite sure who it is that you represent.

Ms Hepworth: I'm speaking on behalf of myself. It was a very difficult decision for me to come forward in these hearings in this very public manner. Obviously, I've invested a lot of my life working in retail, but as a manager, I have been forced to do things that I don't believe are entirely correct. My staff was always very good; they were always very capable people; they were always very committed to work. They were very loyal, and to watch my business go bankrupt and watch my former coworkers be called into an office at 10 in the morning two weeks before Christmas and told that was it, prompted me to come down. That experience prompted me to come forward.

Mrs Witmer: What business was it that went under two weeks before Christmas?

Ms Hepworth: It was a women's clothing retailer with 80 store locations across Canada, and they had an office located in Toronto with in excess of 250 staff people, some of whom had no savings whatsoever, had no entitlement to their wages and ended up on welfare for Christmas.

Mrs Witmer: What was the name of the chain?

Ms Hepworth: They were owned by a company in Newfoundland called Ayers. They operated three or four different chains; two of them somehow in the restructuring managed to pick up some of the locations, and some of those locations are in fact still operating with that name. However, the majority of the staff was let go, and that was it.

Mrs Witmer: You said the head office was in Newfoundland?

Ms Hepworth: No, the head office was here. Corporately, for tax purposes, it was held in Newfoundland.

Mrs Witmer: How do you believe that Bill 40 could have prevented that particular job loss?

Ms Hepworth: I believe Bill 40 allows people to talk about the right to organize in a very real way. I have the right to get together with people in my community and open a day care centre, and I have the right to start a softball game with my children, but I don't have the right as a worker to get together with my fellow employees and talk about negotiating any kind of employment understanding.

At various points in my life, I have given my \$1, I have signed my card, and it has never come about. What I have seen in retail are things like the Eaton's workers' strike, and that was horrific. As a retail employee, it was like being beaten over the head night in, night out, going: "Don't you dare do this, because look what you're going to get. You're going to get shut out; you're going to get locked out; you're going to get blacklisted; you're never going to work in this business again." I think this will help.

Mrs Witmer: Ms Hepworth, when did you apply to appear before the committee? You indicated that you found out at the last minute that you were going to be here today.

Ms Hepworth: Oh, I applied some time ago.

Mrs Witmer: You had real concerns at that time?

Ms Hepworth: I applied some time ago. It was just a question of the scheduling. I heard there were all sorts of people, and they couldn't give me a commitment because there were so many people and I was just an individual, and maybe I was going to get on and maybe I wasn't. I don't know what the luck of the draw was. I don't know how it happened; my number came up. What can I say? I had some friends who worked very hard phoning and following up so that I could continue my full-time employment while somebody made sure I could come to these hearings, that I could say yes, I would come tonight.

Mr Fletcher: Thank you for your presentation. To bring you up to date a bit, we've had presentations from boards of trade, chambers of commerce, restaurant associations and tourism associations. All the way along, the underlying perception is that if Bill 40 passes, the big bad

union is going to be out there in the street ready to pounce on unsuspecting working people and turn them into mindless robots or something; that if they sign a union card and say, "Boy, maybe I made a mistake; I'd better go back and rethink this," that they did it because of coercion, that they did it because of arm twisting—when it comes to the organization of a union, what they're saying is the union is going to make you do this.

They forget the fact that the local executive is made up of people who actually work onsite, who, before they became union members, were ordinary people. They think that as soon as people get involved with the union executive or become the president of the local union, they lose their minds and get swayed by the union. The underlying theme I've been getting from a lot of the presentations from the people opposed to this bill is that this is the kind of person they're going to be dealing with if this legislation passes as is, that they're going to be dealing with mindless people. As far as being elected to an office in a local union is concerned, people are nominated, they go through election campaigns and there's a secret ballot vote. That isn't coercion.

You tell me that these people in the retail sector who lost their jobs cared about their jobs, would have liked to organize.

Ms Hepworth: We cared about each other. It's not just a question of caring about our jobs; we were very committed to each other as employees. We worked together as employees, making sure that if someone needed to know something, you passed on valuable information that was essential for that person. That kind of collective action goes on in the majority of workplaces whether or not you have a union. All the ability to unionize will do is empower the employees to actually do that more.

A lot of the stuff about the big bad bogeyman of unions—it kills me. I sit here and listen to this and I think, if you directed that kind of harassment to organized religion in this country, there would be such a hullabaloo. What difference is there? It's still a group of people who come together, they have regular meetings, they put in money regularly to pay for things. God knows, they buy buildings, they do all sorts of social action things; sometimes they build social housing projects. That's what organized religion does, yet we turn this around and say the same kind of people can do all sorts of horrendous things when they're involved as a union, particularly when you're selected to come into that company to add something to that company. So how is it that when you work with your fellow workers to do something for the benefit of yourself and the company somehow you're subversive? I don't understand it.

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The Chair: Mr Huget, if you can be brief.

Mr Huget: Yes, I can. Thank you for coming this evening. I think your type of presentation is the most important.

I want to determine something in my own mind. I want to refer to a retailer's brief. It says: "Canadian retailers recognize and are responding to the needs of a changed

workplace. By offering flexible working hours, women who work in the home and students are able to work while meeting other demands." It also says, "Retailers are committed to empowering employees through enhanced training and increased responsibilities." Has that been your experience?

Ms Hepworth: In my experience, the opportunity to flexible work hours is only extended to where the employer needs a flexible schedule, and those employees who are involved are then forced to accept that flexible schedule. In terms of training opportunities, if that employer decides that a certain piece of equipment is going to be installed there, it will basically burn out its staff in order to get them somehow organized around it. The preconditions to learning those things are not necessarily put in place.

You may take a worker who has not been taught anything for 25 years and all of a sudden it's, plunk: "Welcome to your computer terminal. Get up to speed right now." I've seen that type of situation go on over and over again. For the employees it's very much an intimidation process; it's not a support process. It's not the kind of situation where, "Yes, we recognize you're 50 years old and your entire reading has revolved around Family Circle magazine and now we have given you this computer manual and by next Monday at 9 am you will be entering this stack of invoices correctly or else Friday at 4 o'clock you can pick up your pay and your pink slip." That's the kind of process I've seen in place in terms of training.

For us who work there, training meant coming in, working with workers and helping them out. I have seen staff go through these piles of stuff that people had to deliver and divvy it up to try to give somebody a break so that he or she could figure out how the thing worked, not feel totally intimidated by it, and eventually get him or herself up to speed. That was very much an underground sort of process. It was not, "How can we help you get here, because we as a business need to get here." It was more like, "We want you to be like this by next week Friday, thank you very much, or else you're history."

The Chair: Gael Hepworth, we thank you very much for being with us this evening. You are quite right: You were called upon on very short notice to fill in for a vacancy that was created by a last-minute cancellation. We appreciate you taking the time and accommodating us. In the course of doing that, you've made a valuable contribution. We appreciate very much your interest and your attendance here. Your initial points about the manner in which this traditional committee process accommodates some people were well made and not inappropriate.

Ms Hepworth: On behalf of my son, who I'm sure is one of the few 4-year-olds in Ontario who has had to sit through this process, I thank you very much.

The Chair: We thank you and we thank Gavin for his patience. I tell you and other persons making presentations that not only are Hansard transcripts available of your or any other person's presentation, but through your MPP's office you can obtain a videotape of the legislative broadcast of this or any of the presentations. If your MPP

doesn't know how to do that or doesn't want to do that, have him or her call my office.

WHITBY CHAMBER OF COMMERCE

The Chair: The next participant is the Whitby Chamber of Commerce. Please be seated. Tell us your names and your titles, if any. Try to save the second half of the half-hour for questions and dialogue.

Mr Lynn Woods: Thank you very much for the opportunity to present to this committee. My name is Lynn Woods. I am chairman of the government relations committee of the Whitby Chamber of Commerce. I'd like to introduce members of our delegation today. Miss Fran Maurier is a member of the government relations committee, Mr Marc Kealey is a member of the government relations committee, and we have some other committee members with us: Ray Gilchrist and Ian Bergin, president of our chamber Trevor Bardens, and town councillor John Dolstra.

We have been anxiously awaiting our opportunity to address this committee with a few concerns we have with respect to the proposed changes to the Ontario Labour Relations Act. At the outset, we want to thank the committee and ultimately the government for listening to those of us who may not know all the ins and outs about this particular piece of legislation but who have some significant fears that perhaps the intent, albeit honourable, may have serious economic consequences for our province.

The Whitby Chamber of Commerce government relations committee has been monitoring this bill since the release of the government's discussion paper in November 1991. We are thankful that public participation in the process has been given such importance. We feel it is important to point out in this presentation some of the steps we have taken to educate ourselves about Bill 40 and demonstrate that this legislation could bring about improved cooperation between business and labour if in fact some parts of the bill are amended, which could then encourage stronger partnerships and cooperation between workplace parties.

We are here as representatives of 800 businesses in Whitby consisting of approximately 8,000 employees, some unionized, some not, and we are here with a concern about this act, an act that has been very difficult for Ontarians to understand, too complex and with too short a period of consultation. It is our opinion that public and business decisions should be made in a evolutionary manner, not the hasty, revolutionary manner that we see in this Bill 40.

Nevertheless, concern about Bill 40 and its impact on the province has reached Whitby's business community. We must have a stake in this process, and we must be given sufficient information on how the legislation will impact Ontarians. Concerns we have heard from the outset were not from educated employers or employer groups; they were from the small business sector in our community, which questioned the effects of, in its view, unbalanced legislation impacting negatively on investment, employment and economic growth in Ontario.

Our first call to action was to ask our members to write their MPPs, the minister and the Premier. The response from our members was great; the reply from the government,

however, was minuscule. We received little more than thank you notes for our efforts in bringing the concerns of our constituency to the government, and still no idea of how this bill was going to affect the way we do business.

We did, however, come up with an approach to gauge public reaction to this legislation. The "We Need Your Help" bulletin, a copy of which is attached to this report, was returned to our chamber office in large numbers, from small retail outfits to large department stores, from small service groups to large contractors and manufacturing. We now have a responsibility to everyone who has responded. Their concerns are as legitimate as those of someone who suggests that workers need the protection that unions and collective bargaining provide.

With the help of the Ontario Chamber of Commerce, we sent out a questionnaire, a copy of which is also attached to this report, asking our constituent members if the introduction of this legislation would cause a postponement of any investment plans and what kind of impact would be felt on their business as a result of the imminent passage of Bill 40. Overwhelmingly, the response was one of fear and uncertainty about future investment in their businesses. More important, a large percentage of respondents expressed concern that they did not know what impact the bill might have on their business.

To us, this lack of knowledge of the impact of legislation on Ontario is of critical concern. If Whitby were a microcosm of the province—which it very well could be, with its mix of professional businesses, retail and manufacturing, with its healthy mix of senior citizens, middle-aged and youth population and its respect for a multicultural heritage—one might be made to believe that a major contributor to the economic future of our province, namely business and entrepreneurs, has become fearful of its economic future as a result of a government's desire to bring current status to an outdated piece of legislation.

It is with this in mind that we ask you to listen to our concerns with an open mind, a mind that is capable of making changes to the existing Bill 40 in favour of a less adverse approach to dealing with business and labour. We trust that our presentation will create a sense of balance and truly represent the interests of both sides, which seem caught in the middle of the intent of Bill 40.

Miss Fran Maurier: While we acknowledge the need to amend and update legislation from time to time, our chamber of commerce believes that the principles of equality, fairness and balance must be upheld in this particular piece of legislation. In our view, Bill 40 and the amendments to the Ontario Labour Relations Act give the perception that balance, fairness and equality shift to the employee in such a way that might jeopardize an employer's ability to expand, invest and create new employment opportunities.

There are a few areas of concern we wish to bring to the attention of the committee. The three main ones are union certification process, expanded union rights during strikes, and employees eligible for union representation.

Our members have sensed a certain amount of defeat with the inclusion of the 40% union eligibility requirement. Our members do not know what has necessitated the

need to reduce the existing 45% support for a union certification vote to 40%. Therefore we ask you, what is the reason for making this change?

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Another point that has been discussed among our membership is the elimination of the \$1 fee for an employee who signs a membership card. When an individual has to dig into his or her pocket to finalize a commitment, a thought process is involved. The government's intention to eliminate this small covenant leaves the impression that abuse could become an issue.

Under the proposed legislation, employees who sign a membership card and then change their minds cannot withdraw their support. Combined with the prohibition against employees who do not want a union and the reduced level of support required for certification, the proposed amendments represent a reduction in our employees' ability to influence the future of their workplace. Shouldn't employees who do not want a union have the right to make their views known?

Many businesses in Whitby are unionized and from time to time labour disputes do arise. Our chamber members have experienced concerns about the extension of these rights for a number of reasons. In our view, legislation of this magnitude will make it easier for those involved in a dispute to disrupt the ability of those to work, shop or enjoy unrelated businesses.

The act gives access to third-party property. We interpret this to mean that if a grocery store's employees at a Whitby mall were to enter into a strike position against their employer, Bill 40 gives them the right to picket at all entrances of the business. The consequences of this right conferred on striking workers will prove very costly for unrelated businesses.

At this time there are a number of manufacturing facilities in Whitby that have units in an industrial mall. A strike in one place would disrupt others, and in the view of one employer "shut down my business" due to the proximity of the picketers allowed to picket on third-party property.

We concur with others who have presented on this point that this amendment to the act represents a shift from the protection of property rights that are inherent in our laws. The restrictions that have been represented in this bill towards strikers are curiously vague so as to encourage disruption to the public and other unrelated businesses.

Employees eligible for union representation: In this particular section of the bill, our chamber of commerce strongly encourages the Minister of Labour and this committee to examine the job classifications of those who are eligible to join unions. For example, we feel there is an inherent conflict of interest by allowing security guards to join a bargaining unit of their choice. We feel that the existing legislation should remain unchanged, where security guards may be represented in a separate bargaining unit by a union which only represents security guards.

Mr Marc Kealey: I don't want to take up too much time. I just have a short comment to make. The only thing I want to touch on is the purpose clause and why it's even

included in the body of the legislation. It's a little curious and I just want to talk briefly on why that would have been included in the body.

The problem we're having is not a problem of nitpicking or maybe coming to this committee with another business problem that this government would just likely ignore because it's business. For us, the fundamental problem here is that there's a perception out there. Right now the OLRB mandate is balanced, with labour on one side and business on the other, and decisions are made with a balance in mind.

In our view, the perception is that by including this clause in the act—it states that it's encouraging the process of collective bargaining so as to enhance "the ability of the employees to negotiate with their employer for the purpose of improving their terms and conditions of employment." In some instances that is relevant in terms of an employer-employee relation, but in the perception of the Whitby Chamber of Commerce, it seriously shifts the balance to the employee. We have a serious concern about that.

It also raises an economic question, in our minds. These are tough times—we recognize that—and a collective bargaining situation is a costly experience to go through. The OLRB decision would be weighed in favour of an employee—again in our perception—and if we're interpreting this clause correctly, it would be difficult for the OLRB to permit a hard-line bargaining stance on the part of an employer and even more difficult for the board to allow for other concessions in a collective bargaining situation for the employer.

To us the purpose clause is just a little curious. I'm just wondering in terms of how it's going to impact on an employer's decision to do business. It just adds another perception that something is weighed against the status quo, against business and labour being on a level playing field. That's all I have to say.

Mr Woods: The Whitby Chamber of Commerce wants and needs to work with our elected officials on matters that affect the economic wellbeing of our province. It is our goal and it is our mandate to bring the concerns of business to those who make the laws in our province; namely you, the legislators.

The Whitby Chamber of Commerce's presentation outlines concerns to Bill 40 in four areas:

The union certification process: The change to the process of certifying unions in the province has dropped from a requirement of 45% to 40%.

Expanded union rights during strikes: This item deals with changes to the act that now permit those involved in a labour dispute to strike on public property and private property, hence interrupting unrelated businesses.

Employees eligible for union representation: We are encouraging the committee to examine the classification of those who are eligible to join unions to avoid apparent conflicts of interest.

The purpose clause: The act now includes a purpose for the act in the body of the act, giving a mandate to the Ontario Labour Relations Board which appears to shift the balance of the mandate of the board towards the employee, thus making it difficult for concession bargaining by the employer.

We recommend to you, the legislators, that Bill 40 include the right of confidentiality of workers to vote by secret ballot.

We appreciate your efforts of openness and consultation. We believe it is the responsibility of our elected officials to help us to understand the changes that have an effect on the way we live and work in this province. In our opinion, Bill 40 will have an impact on the way we do business in this recession-scarred province. Change is necessary, and adapting to change is just as necessary, but at the very least we are owed an opportunity to have our views heard and a clear understanding of the impact of this change. Businesses and investors are likely to pass us by in Ontario if we choose to ignore excellence and competitiveness at the price of perceived fairness.

We trust that our humble effort will help you in your deliberations.

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Mr Carr: I was interested in the part where you said that a lot of the companies aren't aware of this legislation and the government thinks all business is lined up to take a shot at them. In speaking to a lot of chambers, they don't want to have to deal with any government at any level, of any political stripe. They just want to worry about their day-to-day operations and not have to get involved in any political battles.

I was interested in your survey and the feedback you got—I guess it probably isn't too scientific—because you put down investment plans and so on. What was the feedback you got from the members, of those that sent it back in? What were they saying?

Mr Woods: Basically, the underlying theme is that as a chamber, we have a mandate to identify to our representatives what this bill is all about. The underlying problem we have—and that's what we got back from them—is that people just don't know the economic impact this bill will have on Ontario and their businesses.

We have a problem explaining that as well, because we feel this government has not produced an economic study that would provide that information to us. We don't know how many jobs are going to be created by this particular legislation or how many people are going to come off the unemployment line because of Bill 40, or conversely, how many businesses are going to leave Ontario because of this particular bill or how much investment won't come into the province because they don't want to invest in this province.

Our real problem was that we couldn't identify to our representatives the problems or the economic impact, and they are very scared because they don't know as well. I don't think the discussion paper and the memoranda that have come out were adequate enough for us to do our job and our mandate.

Mr Carr: The government has said it has looked at some of the impact studies that have been done and has not thought they were worthwhile. As we've said to Mr Mackenzie many times, "The reason you haven't tabled your own is because you're afraid of the results."

The fact of the matter is that for this piece of legislation they should be doing impact studies but they haven't

done them because they're afraid of what they will show. Whether the job losses will be 100,000, 50,000, 200,000 or whatever, there will be significant job losses. What is your feeling with regard to the government proceeding with this legislation without doing any impact studies? What would your membership like to see?

Mr Kealey: Mr Carr, if I could answer that, basically we'd like to see Ontario's response to an impact study. It's simple. There is a constituency out there that is concerned about this. Again, it's the perception that just because business is all up in arms about this, a particular government that just doesn't happen to think business would cooperate with it would turn a blind ear, if I can be so bold, to answering the question of an impact study.

There are numbers out there. As Lynn said in our presentation, we have 800 businesses in our town and we were inundated, literally, with information from people who are saying, "I don't know, with my small business or my manufacturing facility, if this Bill 40 is going to impact on me in a negative or positive way." Again, I go back to the perception. The perception is that because it seems to weigh in favour of the employee, there may not be a positive impact to this, and we want to know what the actual numbers are.

Mr Ward: Thank you for coming from the fine town of Whitby to give us your good presentation.

You had a concern about security guards. I think you're aware that security guards have the right to join any union of their choice everywhere else in Canada and conflicts don't seem to arise. Why do you feel that won't work in Ontario?

Miss Maurier: I have worked with unions all of my working life pretty well. My concern is a conflict of interest in that case.

Mr Ward: But it's everywhere in Canada and that conflict of interest doesn't occur.

Miss Maurier: Are these security guards in the same unions as the companies they're representing?

Mr Ward: Yes. They have the choice everywhere else in Canada to select the union of their choice or not to be unionized at all. That's another option. But everywhere in Canada.

Miss Maurier: My concern with that is that you can use the national security guards that are around. I prefer not to use the names, but you can hire security guard services or you can hire a security guard and he would get the full benefit of the wages that a company pays and not have to take off the hourly deductions or whatever the salaries are that go to the service. If you're running a manufacturing or other type of business and you hire a security guard and he can join the union that is in your facility or the one next door, I feel that then there is a conflict of interest.

Mr Ward: Part of the need to update the labour act is, we think, to overcome some obstacles that are in place for employees who make the choice to become unionized. We think there are some obstacles in place, and we're hearing evidence that there are.

I sense from the critics of the bill that there's a fear from employers to have their employees organized. It's just a sense I'm getting. Perhaps you can clarify this for me, because they're the same employees before they make the decision to join a trade union and afterwards. Is that an unfounded fear on my part?

Miss Maurier: I would think it's an unfounded fear on your part.

Speaking for myself, from my experience in the business world, which has been longer than I like to admit, I have basically always worked with organized, and worked in companies where the unions or the organization came in while I was there. No, it didn't change the people, but it did change the demands and the financial structure that companies had to go through. I feel some companies today are just not in a financial position to meet the demands of the increased dollars, and this type of thing.

In my years in the business, I've also gone through three facilities that have closed: one because of the fact that it couldn't meet the demands, and one because there was no talking with the committee. We negotiated at very long lengths with the committee. They still wanted more. It just wasn't there to give them. The plant closed down—a very nasty strike. It was in an area where most of those people now are unemployed and unable to get jobs. One of the sad things in that situation was that the final information never got to the membership.

Mr Woods: Just to answer your question, one of the things that we have found—and your statement was not untrue that there definitely is fear out there about forming unions. But the largest fear is, what is the impact it will have on them? They don't know. They really don't know. If this bill comes into legislation and they're allowed to form unions, many of the businesses don't know what impact that will have on them. There is fear. There's no doubt about it.

Mr Offer: Thank you for your presentation. I was going to ask a question about your thoughts on the impact of the legislation, but I see that's been asked a couple of times already.

I somewhat disagree with the last question of Mr Ward about the fear of organization. I understand that, but what I'm hearing is that there is a concern about employees, men and women in the workplace, being able to freely make their choice. They have the right to organize, the right to associate and the right to strike. No one disagrees with that. What I'm hearing is that we have to make certain that the legislation is designed and framed so that those men and women in the workplace are able to voice their concerns or their preferences freely.

One of the ways which has been contemplated is by giving a free vote, a free and secret ballot, to those employees. I'm wondering if you can share with the committee what your feeling is on that.

Mr Kealey: Again, Mr Offer, I think it's important that when we talk to legislators—maybe we're a business group, fair enough, but we're also people who may not understand things the same way politicians do. I don't know if that's good or if that's bad. But there is a bill here

that, for all intents and purposes, we have come to this committee to express some concerns about. I'd rather be doing something else on a Wednesday night.

I just want to point this out. If this bill comes into effect as it is, on paper and in writing, it jeopardizes the relationship, at least in our view. The reason it jeopardizes the relationship is because it pits the employer against the employee in writing, and we have a concern about that.

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When you say to an employee, "Right now you're working in a non-unionized facility or workplace," there's a relationship between an employee and employer and it's fair; all of a sudden something comes into writing that says: "Now you have the ability to organize and we've lowered the certification process so that it makes it easier for you to unionize. Not only that, we're doing away with the commitment on your part as an employee to actually dig in your pocket and put out a dollar." So we're saying to you now that this act, if it comes into effect as it is, would in our view weigh the balance of power, if that's what you can call it, or create an imbalance in favour of an employee.

As I said earlier on, and as Fran was suggesting, these are really tough economic times and in our view decisions have to be made at the employer's level that might not benefit an employee. It's the goal and desire of labour and of unions—I respect that and I think everybody does; as I said, I think it's important—to achieve something at the workplace, to achieve a part in it. But if that's the case, why pit it so that labour and employers on paper are fighting each other? That's our concern.

Mr Chairman, with the greatest respect, we don't want to come here and fight. We want to be constructive. I take exception to the fact that every time a business group steps up to this microphone it's criticized for coming against what this government is doing. You know, people suggest and the woman who made a presentation before us suggests that we have to work together, and we want to do that.

The Chair: Thank you. I want to thank Mr Lynn Woods, Ms Fran Maurier and Mr Marc Kealey for coming here on behalf of the Whitby Chamber of Commerce. You've made a very strong and forceful argument on behalf of the position you hold and on behalf of your membership. We thank you for your interest and your participation. Please keep in touch.

CANADIAN UNION OF PUBLIC EMPLOYEES, NIAGARA DISTRICT COUNCIL

The Chair: The next participant is the Canadian Union of Public Employees. Would you please come forward and seat yourselves in front of a microphone. Please tell us your names and titles. Start with what you're going to tell us. Try to save the last 15 minutes for exchanges.

I want to remind other people that there are coffee and soft drinks at the side of the room.

Mr Brian McCormack: My name is Brian McCormack. I'm the president of the Niagara district council for the Canadian Union of Public Employees, and with me is one of our area staff reps, Mr Brian Blakeley.

On behalf of the members of the Canadian Union of Public Employees in the Niagara region, we are pleased to have this opportunity to present our views on Bill 40, the government's proposed amendments to the Ontario Labour Relations Act, before the members of the Ontario Legislature's standing committee on resources development.

The CUPE Niagara district council is comprised of affiliate CUPE locals representing some 6,000 members, who are engaged in many varied occupations and who live in the regional municipality of Niagara.

We believe that the central issue of Bill 40 is one of workers' rights. In the simplest of terms, the proposed legislation in our view outlines the manner in which workers should be treated within a modern democratic society and the economy that serves the needs of such a society.

We hope the members of the committee will keep in mind that business opposition to the advancement of workers' rights is not new, although the level of the current volume is somewhat surprising. Employers have, as a matter of historical record, opposed, among other public policy measures, the Factory Act of 1884, prohibiting the use of child labour and establishing minimum workplace rules; suffrage and the extension of the right to vote to women; reductions in the workweek of 60, 54 and 48 hours to the present 40 hours; the removal from criminal law of the provision of engaging in a conspiracy if a worker joined a trade union; the Workers' Compensation Act of 1915; the health and safety acts, Bills 78 and 208; public education; Canada pension plan and, of late, pay equity and Bill 40, to name a few.

Not wanting to appear unfair, we should point out that employers have supported public policy measures such as wage controls, the Canada-US free trade agreement, unemployment insurance cutbacks, pension clawbacks and reduced social expenditures. Either through support or opposition to public policy initiatives, the pattern has been consistent. Any measure designed to help workers has been opposed by business spokespersons.

The remainder of our presentation is contained within the following pages of this brief. We have focused on areas of Bill 40 that are of particular concern to the CUPE members in the Niagara region. We stand ready to respond to any questions the members of the committee may wish to submit to us on the content of our submission.

Under organizing and certification—

The Chair: If I may interrupt you briefly, you may just want to highlight, and I trust that's what you are going to do, each of these areas.

Mr McCormack: Yes. Under organizing and certification: The proposed amendment in section 92.2 will allow unions to request an expedited hearing when they file an unfair labour practice complaint under section 91 of the act, alleging that an employee was disciplined, terminated or otherwise penalized during organizing activities.

The \$1 membership fee will no longer have to be paid by an employee in order to become a member for the purpose of certification. We support this proposal, as it eliminates one of the objections an employer might use to delay and frustrate the certification application.

In earlier presentations and written briefs, the trade union movement recommended that automatic certification be reduced to a simple majority and a representation vote to 35%. Such a proposal is not out of line with other jurisdictions, such as that of the federal government and such provinces as Newfoundland and Quebec. In Saskatchewan, the board can hold a vote where as few as 25% of the employees are shown to be members.

The main effect of this proposal will be to prevent the board from considering petitions from employees who claim they do not want to be represented by a union where such petitions are filed after the union's application for certification date. Restricting the role of anti-union petitions in certification applications is a welcome and major step forward.

It is our view that if a worker wants to decertify, he or she can do so currently under the act by applying to the board in the months just prior to the termination of his or her collective agreement. We therefore ask the government to take the necessary further step and completely eliminate petitions and revocations.

Under unfair labour practice certification: The purpose of this change is to deter an employer who acts early enough in the process to avoid the current unfair labour practice provisions. This will go a long way in restricting blatant anti-union acts by an employer during an organizing campaign.

Mr Brian Blakeley: Under part-time employees and appropriate bargaining units: The CUPE Niagara district council welcomes the amendments to section 6 of the act, which direct the board to find that a single union of full-time and part-time employees "shall be deemed by the board to be a unit of employees appropriate for collective bargaining." These amendments help unions address the low rate of unionization among part-time employees, a considerable portion of which are women and visible minorities.

Under consolidation of bargaining units: In short, we can envision many circumstances wherein bargaining unit consolidation would be positive. The effect of this amendment largely depends on how the board interprets it. The amendments allow the board to consolidate bargaining units and give it some direction as to the factors to be considered, but the board is not required to combine bargaining units.

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Under the amendments to improve collective bargaining and reduce industrial conflict, the use of scabs: Surely this is the most controversial section of the proposed amendments. The use of scabs and possible prohibitions against this practice has been the subject of considerable debate since the introduction of anti-scab legislation in Quebec. Now the government's proposals move significantly in the direction of the Quebec legislation. Sections 73.1 and 73.2 constitute far-reaching restrictions on an employer's ability to have bargaining unit work done during a strike.

The passing of these amendments should eliminate the emotionally charged and hostile picket line confrontations of the past. This being said, Bill 40 also contains significant limitations; notably, the restrictions on performing

bargaining unit work would only apply to the workplace where a strike is occurring. This means that an employer can still legally shift bargaining unit work to another geographic location. Employers are also allowed under the amendments to contract out bargaining unit work.

The government has provided several justifications for these amendments. In a fact sheet released with the proposals, one of the rationales held that strikes will be shortened, thus helping Ontario succeed in a new global economy. The CUPE Niagara district council is convinced that this will not be the case as long as such gaping loopholes exist in the amendments. As long as employers can relocate, contract out or use non-bargaining unit employees, along with supervisors, to do bargaining unit work, the duration of strikes will not be appreciably shortened. We remain absolutely opposed to these serious omissions in the amendments.

We also deal with the issue of the exceptions. The impact of these exceptions for CUPE bargaining units will be significant. The majority of CUPE health care workers are currently denied the right to strike under the Hospital Labour Disputes Arbitration Act. The inclusion of essential service exceptions in the anti-scab provisions of Bill 40 will effectively expand this ban on strikes for vast numbers of CUPE members.

Several changes could be made to these amendments. The first concerns the potential for delay in receiving a decision from the board where the employer is not complying with the proposed amendments. The board is not required to expedite its hearings on such issues. The government should move to ensure that the board has strict time limits within which to make these rulings. The potential for delay would be greatly reduced if the amendment required the board to rule in an expedited manner.

Mr McCormack: In conclusion, the government of Ontario is to be commended both for initiating a full consultation process enabling all views to be heard and for proposing significant amendments on labour law reform. Bill 40 represents a far-reaching and progressive package of provisions which will help working people in Ontario maintain and advance their standard of living and quality of life.

The CUPE Niagara district council urges the government to pass this very important legislation at the earliest possible date this fall.

In conclusion, we would like to take this opportunity to thank the standing committee on resources development for taking the time to hear our views. We trust that our concerns will receive serious consideration in the final writing of this legislation, which is very important to our members and the people of Ontario as a whole.

Mr Ferguson: Welcome to the committee. We certainly appreciate your comments, as with all the other comments we've heard over the past number of days.

I have a couple of questions. Earlier today, Waste Management Inc appeared before the committee with its American lawyer and expressed some concerns about garbage pickup. Earlier this evening the ever-capable mayor of Kingston, Helen Cooper, on behalf of the Association of

Municipalities of Ontario, made a presentation and also expressed some concern about what it would call essential services.

I understand that at this point in time the specified replacement worker within the act isn't as closely defined as some people would like. What I'm wondering from both of you is whether you would consider garbage accumulating on the streets of either Toronto or any other municipality as—whether garbage pickup is an essential service, and whether you would categorize that as you have on page 13, item iii, as “serious environmental damage.”

Mr McCormack: No, I don't see it as being an essential service. Maybe there is an immediate reaction effect in the municipality, but as soon as an agreement is reached, then people get out and the garbage is disposed of as per the normal situation.

Mr Blakeley: One of the other things to bear in mind is that we don't bargain within a vacuum. Part of the process is the union and the management negotiating. The other part of the process is the customers—taxpayers—influencing those negotiations. In the past, we've had strikes in municipalities and garbage has piled up. If you will, the weight of that pile rests on the parties negotiating. The heavier the pile, the quicker the parties are forced to deal with the issues before them. That's the way we've operated in the past in that area, and I think we will likely continue in the future with this legislation because, as Brian said, that's not what we would consider an essential service.

Mr Ferguson: I recall that reference has been made on a number of occasions, not so much in this committee but in the Legislature itself, to the “union bosses” of Ontario. These two gentlemen obviously are here representing the Canadian Union of Public Employees, Niagara District Council. I would like to ask, just for the record, whether these two individuals who represent their membership in a leadership capacity have jobs in addition to representing the membership and, as a representative sample of the union bosses of Ontario, exactly what they actually do. Do you have what I think the general public might categorize as real jobs?

Mr McCormack: Sometimes you get a phone call and you get a question. The first thing when you say that you are president of the union is, “Oh, that's a full-time job.” Yes, it is, but it's not my full-time job. I'm an employee with the corporation of the city of Thorold, a truck driver, and not that long ago was one of the men involved in the operation of garbage pickup for the city of Thorold.

Mr Blakeley: I'm a full-time staff employee of the union and have worked all of my working career since graduating from university in various capacities for CUPE. I consider it a real job, and anybody who disputes that is welcome to tag along for a couple of days.

Mr Ferguson: Would your position be an appointed position as a staff member or would it be an elected position?

Mr Blakeley: It's a hired position. I apply for the job and hopefully at some point I'm selected for a position.

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Mr Eddy: I wanted to follow up on Mr Ferguson's question. It has to do with essential services. As has been mentioned, we've had groups before us stressing the importance of what are considered to be essential services and defining them at some time, hopefully before the legislation is passed. There was the Ontario Good Roads Association, the Municipal Electric Association and the Association of Municipalities of Ontario, somewhat similar.

AMO mentioned services required by statute in addition to essential services mentioned by the others. In view of what you said on page 12 about the gaping loopholes—you said garbage isn't considered an essential service; I expect that kind of depends on the length of time of the strike—what do you feel about essential services? Are there some services that are essential? Would you consider them to be essential and should they be carried on, or do you see it as a closedown, that if there's a strike things close down? Could you comment on that, either of you?

Mr Blakeley: I think in Ontario the essential services are covered by legislation as of this date. The police act, the firemen's act and the Hospital Labour Disputes Arbitration Act have in the past defined what the essential services in Ontario are. It's my opinion that those are the essential services in Ontario. The legislation, as it's proposed, will allow employers to continue to provide services that they can satisfy the Ontario Labour Relations Board are essential. It will also allow them to continue to provide services that they can provide with non-bargaining unit employees.

Our position is that those loopholes are so big they're going to handicap our ability to bargain for our members. I think the legislation sets out what will be considered and puts into law a process for the employers on behalf of whomever to expand that definition for their particular circumstances.

Mr Eddy: You've mentioned three very important ones, and I acknowledge that, but I'm thinking of other things that are for the most part municipal services, such as water treatment plants for water supply, sewage treatment plants and some of those things. They couldn't always be managed perhaps entirely by supervisory staff.

Mr Blakeley: My understanding of the legislation is that the employers have the obligation, where they deem it necessary, to submit requirements for essential services.

Mr Eddy: But essential services, do you agree, should be defined very specifically.

Mr Blakeley: I think that's impossible. To do that in legislation is a ridiculous sort of job. The federal government does it through the employer. How can the Legislature of Ontario sit down and decide what an essential service for every municipality and every employer in Ontario is?

Mr Eddy: I think it would be in general terms for those that have certain things. I think it could be done and it's important that it be done.

Mr Blakeley: I think it is done in the legislation.

Mr Offer: Thank you for your presentation. I think on page 14 of your presentation—I'm not going to ask a question on it—whatever one's position is on the replacement worker and on the prohibition of replacement workers and the exceptions to the prohibition of replacement workers, you've clearly pointed out a major omission in this legislation; that is, there is no process in anyone being able to deal with decisions as to who is exempt from those provisions and the time period required for decision. I think it's clear that the legislation is severely defective, as you've indicated, because of that glaring omission.

My question to you is right on your first point on page 3. I'm sort of treading in some dangerous area but I think it's important, and it's the protection of employees from unfair labour practices during organizing campaigns. I ask this question because I have a concern that the wording may not protect employees. I'll ask the question; it is extremely specific. The legislation says that if the union requests an expedited hearing—and I think there are a lot of people who would find that right—the board shall begin its inquiry within 15 days and it must hear the complaint on the consecutive days and then render a decision.

I think it all sounds very nice. What happens if during the hearing somebody, either the employee, the employee's solicitor, the union or a union representative, for a variety of reasons that only life brings out, can't be there? My concern is there is absolutely no discretion in the board in stopping the hearing. My concern is that, as a result, the employee's rights are far from protected; they are put at incredible jeopardy.

I know it all sounds right: There's an expedited hearing and it's going to commence and it's never going to stop until it's ended. What happens if the employee, if the union, for—you know all these things that happen in life—illness or a variety of matters, can't be there? There's no restriction on the board.

The Chair: Okay, let these people respond to that, because Ms Witmer wants to ask some questions too.

Mr Blakeley: I think, Mr Offer, that if you've ever been involved in a situation where somebody's been fired for organizing, you will recall that (a) the employee is available because he is no longer an employee and is interested in being there because he's unemployed and (b) the trade unions have incredible commitment to those persons and will be there. Our preference with this would have been that it be quite as expedited as a case where, say, an employer has a concern about an illegal strike, where he can wake up the labour board and get action at 2 in the morning. That's the sort of expedited service we would expect for this situation.

Mrs Witmer: Thank you for your presentation. On the final page you congratulate the government of Ontario "for initiating a full consultation process enabling all views to be heard" and for the amendments. Now, I guess if we're going to talk about a full consultation process, and that's hopefully the process we are participating in as we sit here in Toronto and travel the province for five weeks, it would mean that as a result of these hearings the views of all the participants would be taken into consideration as

well. You obviously know that we have heard many conflicting points of view. Some of the concern has been focused on the fact that the agenda, up until now, has been union-leader-driven. There is not a proposal there from any other sector or any other individual.

I guess I would ask you, because obviously you've been following this process very closely, if the government were going to make some amendments, if it were going to move forward in attempting to reach a compromise, consensus, promoting harmony between labour and management, what amendment could you see occurring that would certainly indicate that there was a willingness to move towards some compromise and taking all the views being presented into consideration?

Mr Blakeley: With as much respect as we can manage on that issue, this document is as amended and as watered down as I can imagine its being. The document that was leaked, I believe, a while back, in September, in some nice area in Georgian Bay was a lot closer to what we were looking for if you speak of union leaders. I can't speak on behalf of union leaders, because I know some of the people to whom you probably refer, but through this process the needs of working people for adequate labour relations legislation have been as amended through consultation as I think they can be.

This document represents the barebones necessary improvements to allow us as working people to address our concerns. I think this document goes a long way away from where if the union bosses, if there were any as you described them, were writing legislation. We wouldn't be tabling this; we would be tabling something a lot more progressive in our view.

Mrs Witmer: But we're still dealing with the original agenda, and I guess if we're going to sit here we need to be open to making some changes that are going to accommodate some of the conflicting views we've heard. One of the areas that has been proposed by individuals and groups is the need to open up the process. Unions have been given more rights, but they also need to be given some responsibilities. People are suggesting that all employees have the right to be informed as to what is involved in joining a union, what's the implication of a strike, what's the union fee, what's the union history and that the employer also have an opportunity to speak, and then after that there would be a secret ballot vote. What objection do you have to a free and democratic secret ballot vote for all individuals?

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Mr McCormack: When we get into discussion of a secret ballot, immediately, as an involved trade unionist, the hair on the back of my neck stands up, because where we are looking at legislation that's going to hopefully defuse some of the anti-union activity that is out there, that secret ballot idea would come right back to reinforce it. The intimidation by bosses over somebody would be evident. All the people I work with are intelligent enough that they understood what it means to sign a union card. When they made that commitment, they turned the rest of it over to the people we have who help and understand and explain.

Mrs Witmer: I appreciate that.

The Chair: Thank you to CUPE and to both of you, Brian Blakeley, national rep, and Brian McCormack, Niagara District Council president. Thank you for making the trip to Toronto. Thank you for your interest in this legislation and for your submissions this evening. We trust you'll be keeping in touch with members of the committee and other MPPs to make sure that your ongoing concerns are expressed and known to members of the Legislature. Have a safe trip back.

DYLEX LTD

The Chair: The next participant is Dylex. Will whoever or however many are speaking on behalf of Dylex come forward, seat themselves in front of a microphone, tell us who they are and their titles, if any, and proceed to say what they will. We've got half an hour. We want to save at least the last 15 minutes for exchanges, questions and dialogue. Go ahead, sir.

Mr Lionel Robins: My name is Lionel Robins and I am president of Dylex Ltd. I'm speaking here today on behalf of Dylex. Thank you for the opportunity of speaking to you this evening. I understand 1,200 individuals and groups have sought to participate. Clearly this is an important issue for all Ontarians to consider. I recognize that you have had a long day, so I will try to keep my comments brief.

Dylex Ltd is a Canadian success story. We are an Ontario-based leader in the specialty retail field, with 1,380 stores in Canada and the United States. Our 14 chains provide merchandise of top quality and value in congenial and convenient shopping environments. Familiar names include Bi-Way, Tip Top, Suzy Shier and Thriftys. In Ontario, Dylex has approximately 700 locations throughout the province. It's fair to say that Dylex operates in virtually every mall in Ontario.

As both a retailer and a manufacturer, Dylex employs approximately 15,000 people across Canada. Approximately 9,200 of our employees work here in Ontario. Some of our operations are unionized; others are not. We have successfully negotiated over 50 collective agreements without a strike. Because we are an Ontario-based company, with 50% of our stores, 60% of our sales and more than half of our workforce here in Ontario, the negative implications of this bill could destroy the company.

In international terms we are still quite small. Our sales last year were less than \$2 billion, to compare to Wal-Mart, a fast-growing American competitor that has annual sales of over \$45 billion.

The retail sector has been badly hit by the combined forces of recession, cross-border shopping and record low levels of consumer confidence. In fact, in the first three months of this year over 2,800 retail jobs were lost in Ontario. This does not include layoffs involving less than 50 employees. Our company has not been immune from these pressures. Last year we closed our Town and Country operations. In the last three years we have suffered losses of over \$100 million.

We are well into the second half of 1992 and economic recovery continues to elude Ontarians. A successful retail sector is critical to achieving economic renewal. Retail drives product and manufacturing innovation. For every

job in retail there are two more associated with it. Retail provides critical first jobs to our youth. Youth unemployment is now about 20%.

I think it's fair to say that we are all just beginning to realize that the changes under way are not temporary or cyclical and that our economy is undergoing a fundamental revolution. As we face these restructurings, public policy should enhance our ability to respond, not constrain it.

Regrettably, the process of considering the amendments to this act has driven a wedge between employers, the trade unions and the government of Ontario unlike any we have ever seen or experienced before. This is a terrible shame because the government has a critically important opportunity before it. I am referring to the opportunity to provide the province with bold leadership in the struggle to find a new relationship between labour, management and government that could take us forward into the next decade. The government can work to bring together the parties to seek the required new solutions and to engage in real strategic planning for an industrial policy for Ontario. What is special about this government's position is that the union movements trust it. Now you must work to forge a similar bond of trust with the business community. If this can be achieved, the result could be an unprecedented opportunity of cooperation.

Against this backdrop, government should be making every effort to help promote the Canadian retail sector in Ontario, not legislating policy which will only worsen the already bleak situation. Bill 40 sets retail employees and employers backwards in confronting the challenges that face us. Bill 40 will impede new innovation, distance employers from their employees and slow down the pace of economic renewal. Bill 40 will also damage consumer confidence, which is essential for economic recovery.

The November discussion paper on labour reform has already had a negative impact on new business startups, new investments and reinvestment plans of those in Ontario. Critics accuse employers of creating hysteria and scare-mongering. Investment analysts are, by nature, jittery. Now, more than ever, it has been our direct experience that since the release of the discussion paper, it has been more difficult to secure funds for new investment in Ontario.

Bill 40 falsely assumes that employers and employees cannot constructively work together without legislation. True partnership is achieved by setting common goals and working towards them over time in a climate of mutual trust. This legislation will only undermine employers' efforts to work constructively with employees. Imposing cumbersome and outdated processes based on practices from other sectors and other jurisdictions will destroy the initiatives under way to transform Canadian retailing.

For years, Ontario has focused its attention on the resource and manufacturing sectors, yet retail is fundamentally different. Applying labour provisions designed for the factory floor of the 1950s will not solve the problem of retail in the 1990s. Those who support Bill 40 argue that each proposal exists in some form or other in other jurisdictions. It is important to understand the cumulative impact of these proposals. Taken together, these changes represent

a dramatic departure which significantly worsen the labour relations climate in Ontario.

The purpose clause: One of the most significant changes is the purpose clause. By placing it in the body of the legislation, you are giving unprecedented powers of interpretation to arbitrators and the Ontario Labour Relations Board. By indicating that working conditions can only improve, the clause ignores economic realities which may be constraining a company.

Automatic certification: It is also disturbing that if the Ontario Labour Relations Board rules that an employer has contravened the act during a union organization campaign, a union is entitled to automatic certification. This can be achieved regardless of whether the union has the support of the employees.

Full-time and part-time: Under the present system, if the majority of full-time or part-time employees want collective bargaining, they can achieve it. In most situations, full-time employees have significantly different interests from part-time workers. To illustrate this difference, let's look at whether a pension plan should be improved or whether wages should be improved.

Part-time workers tend to be those seeking transitional employment: students, artists etc. They do not expect a long-term relationship with the employer. They are more interested in higher incomes now, rather than seeking pension benefits. Our full-time employees, however, expect to spend most of their careers with us and have a real interest in negotiating retirement provisions. Consolidating bargaining units will make the unions' activities easier but will not reflect the wishes of employees.

Third-party property: The provision to allow picketing on third-party property is another specific concern of retailers. As I mentioned earlier, regaining the confidence of consumers is critical to achieving economic recovery. Consumers will not shop in an environment of picketing and leafletting. By permitting picketers on third-party property, neighbouring stores will also suffer. Principles of fairness suggest it is inappropriate to permit demonstrations or other forms of picketing on the private property of those parties who are not involved in the dispute. In larger malls, some with over 200 stores, there is the possibility of continual picketing. People put off by picketing and demonstrating would likely return to cross-border shopping as an alternative.

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Replacement workers: Virtually every employer's representation has dealt with this clause. Allow me to echo those concerns and highlight that in retail we are striving to flatten our structure and empower employees. What this means is that if there are no managers available to staff stores in the event of strike, the stores will be forced to close. This provision undermines the government's industrial policy that advocates continuous innovation and employee empowerment.

Last week, David Posluns told you that the bill is a threat to Canadian retailing. I want to elaborate. In the time that many of you have been MMPs, you will have seen local Canadian-owned stores close in your communities and new stores open. The Gap, Price Club and Talbotts are

just three examples. Because of the vacancy rate in Canadian malls, our American competitors are getting long-term leases with 75% discounts and cash incentives. As I mentioned, a company like Wal-Mart has sales in excess of \$45 billion, whereas ours are \$2 billion; if they were to open in Ontario and face a strike, it would not harm their viability. To Americans, Ontario is a small market, an afterthought, an extra 100 miles on a US-based distribution. To Dylex, Ontario represents 60% of our market. A strike here would cripple us in a matter of days.

Let me give you an example of how the American government is helping US retailers come to Canada. Last week, it was reported that the US trade department had written American retailers, advising them of fantastic market opportunities for discount warehousing in the Canadian market. The government was offering briefings to explain how Americans could further penetrate our market. Meanwhile, our government is handicapping our ability to respond to these kinds of challenges.

You have been told that criticism of the bill is hostile and hysterical and that employers are simply out to preserve their profits. As I said earlier, Dylex has lost over \$100 million in the last three years, and we are a success story.

We are moving quickly to empower our employees and to ensure that they are well trained and well motivated. Unlike the manufacturing and resource sectors, most of our employees are our point of contact with our customers every day. We spend almost \$1 million annually on staff training and development. We have introduced state-of-the-art information technology and have invested in new store formats in communities across Ontario. We are communicating directly with our employees by such means as employee hot lines, staff input meetings, attitude surveys, upward assessments and self-appraisals. We have also put in place progressive anti-harassment policies. Employees are being empowered to solve problems. The legislation impedes that process.

I'm speaking for a company that is fighting to remain viable in Canada, a company that is investing in employees and in technology to be successful as an Ontario-based international retailer. I'm here to say that the negative impacts of this bill are real. The bill is already affecting our ability to attract new investment. It will impair our ability to empower employees and introduce value-added innovations. This legislation undermines the province's chances of economic recovery. We are working with employees to revitalize our operations. Public policy should support these efforts, not undermine them. Bill 40 is a step in the wrong direction.

Mr Offer: Thank you for your presentation. You may be aware that during our hearings we are also hearing from employees in the garment industry, home workers and individuals who are concerned about their working conditions. I must say they have made some forceful presentations with respect to the position they find themselves in. My question is, as a leader in the retail clothing industry, how do you respond to that concern which has been brought forward to this committee?

Mr Robins: First, I would like to put the problem into some perspective. In the first instance, we are in the retail business. Of the roughly \$2 billion we do, less than 2% is represented by manufacturing, and of that 2%, a very small minority would be represented by home workers. So we are dealing with something that in the scheme of things in terms of size is quite small.

I do have to say a couple of things. We are not perfect; we are not doing everything in a perfect fashion. The issue of the home workers, however small, is not small to the individual who is being affected. It is presently being negotiated and if there are any specific issues we can be made aware of, I can tell you, I certainly would look into them, as I would look into any other situation affecting anyone who worked at Dylex.

Mr Offer: I'd like to thank you for that response. I felt it was only proper to bring up that matter because we have heard this in the committee and maybe we should be exploring that particular issue, not only with yourself but with representatives of the sector, in order to deal with the issue straight on so that those issues which have been brought forward to us can be rectified. It seems that the concerns would not be markedly improved with this particular bill and certainly I want to provide some balance in that respect. But I do thank you for that response and I think we are going to have to deal and work with that issue as time progresses.

Mrs Witmer: Thank you for your presentation, Mr Robins. You mentioned that it's much more difficult to secure funds at the present time for investment. Actually, you are the second individual who has appeared before us today who has made the claim that it is more difficult. Where would you normally have obtained those funds for investment from, and what would these funds allow you to do?

Mr Robins: Let me take your second question first. The primary use of the funds would be for investing in refurbishment of the retail stores, and that is an ongoing requirement. It's probably heightened in the most recent years, given that we do have American competitors who are coming in with new, fresh physical plants. The retail business is not selling need; it is selling want. We are trying to inspire people to want to buy something. I think each one of us would admit that if we didn't buy anything in terms of clothing in the next year, we wouldn't wear out what we have. Our investment in our physical plant is vital in terms of a strategy to inspire people to want to, and it is exaggerated when you have strong American competition coming in to do that.

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A second area that is also vital, as I mentioned in my formal remarks, is that we at Dylex do not look at what is happening as an economic downturn and we do not look at it as cyclical. My very strong view is that we are going through a fundamental restructuring and only the fittest will survive. Another area we are investing and need to invest very considerably in is technology. Just by way of example, when I started in business, which was some years back, when you bought a cash register you bought it for life. We're into the third generation of cash registers in

my time at Dylex, because the technology is changing. We need to be better in terms of eliminating workload for employees at the store and doing it in a re-engineered or automated fashion. The time lag of information to allow people to make effective decisions has changed, and it's changing by the hour. To re-engineer a company of Dylex's size, you're talking \$25 million just to replace the cash registers, but if you don't do it, it's the beginning of your demise.

Those would be the two key areas for which capital is required. Ordinarily the funds would come, generally, out of lease financing. Lease financing is arranged through the various chartered banks and other people, but I can tell you, going back three years, the banks just basically turned off the retail business. They had no faith in it, and it's going to be self-fulfilling, because they apply pressure on the manufacturers; the manufacturers can't finance the receivables and that puts pressure on the retailers. That's really causing the demise, and it is not over yet, not by a long shot. I think anything we do that undermines confidence or weakens the retail climate is going to be more self-fulfilling as time goes by.

Mrs Witmer: I'm concerned about the possible impact of Bill 40 on Ontario businesses, because, as you've indicated, certainly the American chains are coming into this province. Do you see this increasing that they would come in? Obviously if you can't continue to function and others can't continue to function, we won't have a local, homegrown economy.

Mr Robins: They are and they will. I think the impact will increase as the free trade agreement extends and the seamless nature of free trade really levels out.

I think what is also going to get them to come is that in my 25 years I have never seen the amount of shopping centre space that is available. The shopping centres can't afford to sit with empty space; they are very concerned sitting with empty space, because it becomes self-fulfilling. It's hard to be strong vis-à-vis dealing with your people when the tenants walk around and see an empty shopping centre. Shopping centres are fighting for market share, no different than the retailers in them. They're looking to create differences from one shopping centre to the other, and if new concepts come in, like Price Club, like Talbot's, like The Gap, and there are others that are coming, the shopping centres are going to look to be first to have these new retailers as a way of differentiating their mall from their competitor's mall.

I think you're well aware of what's going on in the real estate industry between Cadillac Fairview and Trilex and Bramalea and Cambridge. The thing is crumbling, and they're not going to sit back and have their shopping centres empty. They are going to deal, and we know for a fact some of the deals that are being made. Not only are they putting out the money to build the store, they're providing working capital to operate the stores. It is mind-boggling what is truly going on in terms of efforts being made to attract American retailers.

Mr Huget: Thank you very much for your presentation. I want to refer back to Mr Poslun's presentation of

last week, and this one today, which is essentially identical to the Fairweather one, which is essentially identical to the Hudson's Bay one in terms of wording.

I'm trying to wrestle with an issue that's developed here in the last four or five days that to me is very important. I'm being told on the one hand that the retail industry is a very progressive industry in how it treats its employees, what it does for training, what it does in terms of working conditions and how very much it's interested in the well-being of its employees and using that employee wellbeing as a front-line customer contact and in that regard generating higher customer sales and greater satisfaction.

On the other hand, several groups have appeared before this committee and referred specifically to your organization, and others, as being an organization that isn't quite like that. I've heard it referred to as intimidating, threatening. There have been discussions around what happens when someone mentions that he or she wants to join a union in the retail industry, and your company is not excluded from that. There is an issue of home workers, some who are being paid, as I understand it, the equivalent of a dollar an hour. I had a presentation last night and one of the home workers informed me that she would receive \$7 for this jacket in terms of putting it together.

Clearly, what you're saying in terms of the working conditions in the industry and what they are saying is diametrically opposed. I have a feeling that someone's not telling me the truth and I would like you to help me with that.

Mr Robins: Let me try and do that. First, I can't, and I don't want to, mislead and comment on the problem of a home worker. I would be pleased if you gave me the specifics. As with any other employee, I'd be pleased to look into it. I am certainly not here, and I don't believe we're going to build our company, by abusing people. As I did mention, though, the manufacturing does represent about 2% of the business we're in, and home workers would represent a minute percentage of that 2%.

On the issue you're talking about in terms of an employee and intimidation, again, if you would supply me with the fact, I would be pleased to look into it.

But I would like to comment. I believe very strongly—it's the way I was brought up, I think it's the way I've managed, and I've managed for over 30 years—you can't make people do anything. I don't believe in threats. I believe the role of management, and the culture I've tried to inspire in the two years I've been leading Dylex, is to have management inspire their people to want to, because I believe that's how ultimately we're going to win. If you have to make people do things, I don't think there are enough hours in the day and I don't think you've got enough eyes to watch what's happening. I have, I believe, succeeded in getting a whole host of things done, not by intimidating anyone but by truly inspiring them to want to succeed.

I believe that is the culture that is molding, taking shape and filtering through Dylex. I don't believe it was always there. I don't think it exists everywhere in the company, but I believe it is vital to have that kind of culture to become a world-class company, and if we don't become a world-class company, we will not survive. So as a broad

principle, when you talk about intimidation, I can tell you it is not my belief, it's not my style, never has been my style and I believe it is a recipe for failure.

Mr Huget: If people in the workplace feel they are intimidated, whether it's in your workplace or not, and feel they have grievances in terms of working conditions and in other areas, who want to organize—is there anything in your view that should prevent them from doing that?

Mr Robins: If you're asking whether we look at it that they should not be allowed, no, I'm not saying that. I think what we are trying to deal with is that there is a level playing field in the process. The way it's being approached, I think the level playing field does not exist; that is striking and I think the number one problem we all have.

I mentioned before that I think we have a responsibility to try and lead people. If you look at a couple of things, they're saying that we're not going to get through the recession portion of the restructuring without a change in consumer confidence. I don't think consumers are going to be confident when they see the kind of bickering and uncertainty and lack of capital spending and management attitudes that are fearful of the environment they're living in. I don't believe that is an environment that's conducive to management creating a leading role to create jobs and move forward.

I'm a customer too, and I'm an individual. Aside from running a company, I have my own personal feelings, and there isn't a day that goes by that I don't pick up the paper and read about a factory closing down and people being laid off and cutbacks. Where do you get any kind of feeling of confidence when that kind of thing happens?

You ought to take a look at one other perspective. If you watched a couple of weeks ago, do you know that the banks were paying less money to borrow than the federal government? Does that tell you how much money they've

got and how fearful they are of where to put it? They were paying less on short-term borrowings than the federal government. I don't think it's ever happened.

Mr Huget: Do you think an organized workforce in the retail sector or the retail-manufacturing sector can be competitive?

Mr Robins: Would you repeat the question for me? I just want to make sure.

Mr Huget: Do you think a workforce that is organized or unionized, or however else you want to refer to it, in the retail sector or in the retail-manufacturing aspect of your business can be competitive?

Mr Robins: The answer is, I believe, yes, depending on a whole host of things. I could say the other side, a retail environment that is not unionized could be competitive as well, or I could tell you it's not competitive. I think it relates to how it's managed. I think it relates to the people it has, attitudes it has, policies and practices it has. I think it relates to a whole host of things, so I don't think I can answer it one way without giving you the other.

The Chair: Thank you, sir. I want to thank Dylex and you, sir, for appearing to present your views and the views of your company. We appreciate your interest in the legislation and your eagerness to appear here at the committee, especially at this rather late hour in the evening. Thank you kindly. Take care.

Thank you to the committee for its cooperation throughout the day, thank you to the staff, and we'll be back. We're adjourning until 10 o'clock tomorrow morning, at which time there will be more interesting submissions by interesting people like the Canadian Paperworkers Union, Local 101, here tomorrow at 10 am.

The committee adjourned at 2104.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

***Chair / Président:** Kormos, Peter (Welland-Thorold ND)

***Vice-Chair / Vice-Président:** Huget, Bob (Sarnia ND)

Conway, Sean G. (Renfrew North/-Nord L)

Dadamo, George (Windsor-Sandwich ND)

Jordan, Leo (Lanark-Renfrew PC)

***Klopp, Paul (Huron ND)**

McGuinty, Dalton (Ottawa South/-Sud L)

***Murdock, Sharon (Sudbury ND)**

***Offer, Steven (Mississauga North/-Nord L)**

Turnbull, David (York Mills PC)

Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)

Wood, Len (Cochrane North/-Nord ND)

Substitutions / Membres remplaçants:

***Carr, Gary (Oakville South/-Sud PC) for Mr Turnbull**

***Cleary, John C. (Cornwall L) for Mr Conway**

***Eddy, Ron (Brant-Haldimand L) for Mr McGuinty**

***Fawcett, Joan M. (Northumberland L) for Mr Conway**

***Ferguson, Will, (Kitchener ND) for Mr Wood**

***Fletcher, Derek (Guelph ND) for Mr Dadamo**

***Ward, Brad (Brantford ND) for Mr Waters**

***Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan**

***In attendance / présents**

Also taking part / Autres participants et participantes:

Prial, Richard, labour relations policy adviser, Ministry of Labour

Clerk pro tem / Greffier par intérim: Decker, Todd

Staff / Personnel:

Anderson, Anne, research officer, Legislative Research Service

Fenson, Avrum, research officer, Legislative Research Service

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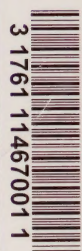
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